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INTRODUCTION TO CULTURAL RESOURCE MANAGEMENT

COURSE GUIDE

Bureau of Land Management
Phoenix Training Center

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ACKNOWLEDGEMENT

To *Herrick E. Hanks*, a very special thank you. Without your contribution and support this module would not be possible.

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Introduction

This training package is designed to orient the non-cultural resource specialist, including the manager, to *BLM's Cultural Resource Program*. The format allows the instructor to be flexible, using the whole package or part of it to fit the particular need, timeframe, or situation. This package will not answer every question or solve specific problems concerning cultural resources. But it will establish a communication base and help improve multiple use management.

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9. BLM Manual 8111 - Cultural Resource Inventory
and Evaluation (Extracts)
10. 36 CFR Part 800 - Protection of Historic and
Cultural Properties

Guide to the Instructor

To the Instructor

Introduction to *Cultural Resource Management* is a 3-4 hour facilitated training module, designed to orient the non-cultural resource specialist, including the BLM manager to BLM's Cultural Resource Program. As an instructor, you should be familiar with the material and are encouraged to review the package in advance of the course. Included in the binder are the course objectives, course outline, lesson plan, course notes, list of visual aids, case studies, and course review (quiz with answers).

As an instructor you should know how to use this package. The course outline gives an overview of the content. The course notes follow the outline and specify what points should be covered. The lesson plan expands the outline by showing the instructor and student activity as well as instructor and student materials.

Different ways and strategies may be used to present this material. For example, the course quiz could be given first as an "ice-breaker", or opening discussion. Or a "hands-on" exercise could be used. As an added point, be aware that responsive groups can use a great deal of time by asking questions and can thus reduce the time of the program in defining cultural resources early in the session. The exercise involves identifying artifacts on a table or passing them around. The case studies can also be used either as individual or group exercises or presented as a class discussion. Another suggestion would be to distribute course materials to students a few days before the course and ask that they read the handouts before attending. Finally, be sure to include adequate breaks; PTC's suggestion is one every hour.

In addition, each area/district/state can adapt its presentation to its specific locale. Such adaptation to local areas may include Cultural Resource descriptions, slide presentations, artifact identification, modified compliance procedures, case studies, and visual aids.

As an instructor you must communicate with the state training officer to determine when and where to hold the class, what equipment and references to use and who is to supply them, how tables are to be arranged, and any other details that have to be worked out.

You will also need to determine whether a trainee has successfully completed the course. We recommend that you use the following criteria in making this determination.

A. Successful

1. Trainee attends all class sessions.
2. Trainee knows material presented as shown by testing and class participation.
3. Trainee turns in evaluations.
4. Phoenix Training Center will provide certificate upon trainees' successful completion of course.

B. Unsuccessful

1. Unexcused absenteeism
2. Lack of overall understanding
3. Evaluations not returned
4. No certificate will be provided

A list of trainees passing the course will be sent to the Phoenix Training Center along with their evaluations, the instructor's evaluation, and any additional evaluations following the class presentation. The training certificates will be prepared from this list and sent to the State Training Officer for distribution.

To maintain uniformity and quality in the field presentation of this course, the State Training Officer, Phoenix Training Center representative, or a Washington Office representative may attend the class to evaluate it.

Two Suggested Formats

Option 1

- A. Introduction to CRM (outline)
- B. Copy of 9 visuals
- C. CR terms
- D. Summary of major laws
- E. Glossary (from 8100 manual)
- F. Memo on Advisory Council
Procedures for 36 CFR 800

Option 2

- A. Artifact recognition quiz-Hands-on ice-breaker used to explain what an artifact is and is not, and how the archaeologist must draw on learned judgment and experience to identify cultural items

- B. CR sites = assemblages of individual artifacts and other materials
- C. Video and area's own slide show
- D. Modification of compliance process

I. Introduction

- A. "Show and Tell" of major sites in Phoenix District area (planned - 15 minutes; actual - 35 minutes). Included video.
- B. Archaeological Methods - A Brief Summary (planned - 15 minutes; actual - 5 minutes)

II. Purpose of Cultural Resource Management in BLM

- A. Authority (planned - 10 minutes; actual - 10 minutes).
- B. Objectives/Elements (planned - 15 minutes; actual 15 minutes).
- C. Inventory (planned - 20 minutes; actual - 30 minutes).
- D. Use categories (planned - 30 minutes; actual - 45 minutes).

III. National Historic Preservation Act (NHPA) - "106"

- A. Purpose of NHPA (planned - 5 minutes; actual - 10 minutes).
- B. Evaluation and Consultation Process (planned - 15 minutes; actual - 30 minutes).

IV. Case Examples

- A. Used three cases provided (planned - 60 minutes; actual - 40 minutes)

V. Evaluation

Instructions to the State Training Officer

Introduction to Cultural Resource Management is a 3-to4-hour facilitated training product designed to orient the non-cultural resource specialist, including the BLM manager, to BLM's Cultural Resource Management Program. The format allows the instructor to be flexible, but we recommend that the instructor follow the course outline. The overall objective is to establish a communication base and improve multiple use management.

The module consists of three parts: (1) the course guide included in a three-ring binder, (2) a video cassette, and (3) overhead visual aids (9). The course guide includes objectives, the course outline, lesson plan, course notes, list of visual aids, case studies, and a course review (quiz with answers). The lesson plan and course notes provide the instructor with a step-by-step guide which covers instruction and trainee activities, timeframes, and materials.

This training package can best be used when facilitated by a knowledgeable, enthusiastic instructor. Instructions, course outlines, and lesson plans have been provided in this course guide to be supplied to the instructor. Although uniformity in the material content presented is our main goal for the instructor, this material (instructions, course outlines, and lesson plans) is not intended to be so rigid as to hinder the originality of the instructor.

If you do not have a local instructor for the course presentation, contact the Phoenix Training Center for the recommendation of a trained instructor or postpone your training until another local instructor can be trained.

To maintain uniformity and quality in the field presentation of this course, the state training officer, a Phoenix Training Center Representative, or a Washington Office representative may attend the class to evaluate it. More evaluations by qualified staff are welcome.

We recommend that the course not be offered to less than 6 or more than 20 trainees at a time for the most economic efficiency and least training difficulties. The class roster showing name, job classification, grade, and series of each trainee will be sent to the Phoenix Training Center before the class is presented. A list of trainees passing the course will be sent to the Phoenix Training Center along with their evaluations, the instructor evaluation, and any more evaluations following the class presentation. The training certificates will be prepared from this final list and sent to the state training officer for distribution.

The best training experience can be obtained only in the best environment. Obtain an appropriately sized meeting room away from distractions. The instructor and the state training officer should begin to coordinate several weeks before the class to ensure they can obtain the equipment needed for the presentation.

INTRODUCTION TO CULTURAL RESOURCE MANAGEMENT

OBJECTIVES - At the completion of this session, participants will be able to accomplish the following:

1. State the basic objectives of BLM's Cultural Resource Management (CRM) program.
2. Distinguish between the primary CRM program and the support role.
3. List the major elements of the CRM program.
4. Describe the basic steps of the cultural resource compliance (Section 106) process and apply the process to a BLM undertaking.

COURSE OUTLINE

Introduction to Cultural Resource Management (CRM)

I. Cultural Resource Management: Its Role in Multiple Use

A. CRM--What Is It?

B. What Are Cultural Resources?

C. The Elements of BLM's CRM Program

1. Primary Program versus Support Role

2. Inventory and Evaluation

3. Nominations and Planning

4. Protection and Use

II. Cultural Resource Directives You Should Know

A. Historical Background: Over Three-Quarters of a Century of Laws

B. Categories of Cultural Resource Law

1. Criminal/Civil Protection (Law Enforcement)

2. Administrative Protection

3. Data Recovery Authority

4. Awareness

C. BLM's CRM Policy and Objectives

1. General Policy

2. Major Objectives

D. ACHP, SHPO, and 36 CFR 800--The Process

III. Case Studies

IV. Wrap-Up--What this Means To You

LESSON PLAN

Course: Introduction to Cultural Resource Management

Instructor: _____

Lesson: _____

Date: _____

Time: 3 1/2 hours

Objectives: At the completion of this lesson participants will be able to:

1. State the basic objectives of BLM's Cultural Resource Management (CRM) program.
2. Distinguish between the primary CRM program and the support role.
3. List the major elements of the CRM program.
4. Describe the basic steps of the cultural resource compliance (Section 106) process and apply the process to a BLM undertaking.

Student Preparation: Review BLM Manual 8100 - Cultural Resource Management, BLM Manual 8111 - Cultural Resource Inventory and Evaluation (8111.1-14C9; .3-53) and CFR Part 800.

1-7

TIME	TEACHING ACTIVITY	INSTRUCTOR ACTIVITY	INSTRUCTOR MATERIALS	STUDENT ACTIVITY	STUDENT MATERIAL
10 min.	Introductions and Preliminaries	Introduce instructor Explain purpose of course Give information on timing, breaks, hand-outs Present course objectives	Course notebook Overhead projector Flip chart or chalk board Course outline Visual 1	Participate in preliminary activities	Handout: -Visual 1
50 min.	Introduce CRM and cultural resources use	Present a brief explanation Define cultural resources (CRs) Show Video	Video: LEGACY - Our Cultural Resource Heritage Pamphlet: "Your Fragile Legacy"	Take notes (TN) and highlight important points in CRM binder (HIP)	Note paper and CRM binder pp. 1 to ____

TIME	TEACHING ACTIVITY	INSTRUCTOR ACTIVITY	INSTRUCTOR MATERIALS	STUDENT ACTIVITY	STUDENT MATERIAL
	Present the major elements of BLM's CRM program	<p>Explain primary program vs. support role</p> <p>Discuss the five elements of BLM's primary CRM program</p> <p>Explain briefly the relationship between the elements and with BLM's other programs</p>	<p>Visual 2</p> <p>BLM Manual 8100 IM No. 83-746</p> <p>BLM Manual 8111 Visual 3</p>	<p>Offer definitions for "cultural resources" and participate in discussion</p> <p>Ask questions for clarification (AQC)</p>	
10 min.		Break		Break	
30 min.	Identify categories of CR laws	<p>Explain briefly the historical background of over three-quarters of a century of CR laws</p> <p>Explain four categories and the laws represented by each</p>	<p>Visual 4</p> <p>BLM Manual 8100</p> <p>ARPA AIRFA</p>	TN, HIP & AQC	CRM Binder pp. ____ to ____
	Present BLM's CRM policy and objectives	<p>Present policy and objectives and discuss</p> <p>Summarize the CRM objectives, covering both the primary and support functions</p>	<p>NHPA Amendment of '80</p> <p>Fact Sheet: The Nat. Hist. Pres. Program Fact Sheet: ACHP Visual 5</p>	<p>TN, HIP and discussion</p> <p>TN, HIP & AQC</p>	

TIME	TEACHING ACTIVITY	INSTRUCTOR ACTIVITY	INSTRUCTOR MATERIALS	STUDENT ACTIVITY	STUDENT MATERIAL
30 min.	Introduce the CR Compliance process	Discuss ACHP, SHPO, and 36 CFR 800 Explain the eight basic steps of Section 106 compliance	36 CFR 800 IM No. 80-241 "The ACHP and the Protection of Cultural Resources" (Excerpts) Visuals 6-9	TN, HIP and discussion TN, HIP & AQC Discussion	CRM binder pp. ____ to ____
10 min.		Break		Break	
60 min.	Apply the CRM compliance process to case studies	Explain and administer case studies Discuss results of case studies	Case studies and instructions Flip chart 1-3	Work through case studies in assigned group, present results and participate in discussion	Case studies w/ instructor
10 min.	Review major points of the session and provide a wrap-up	Review briefly and interrelate: - CRM/s primary role - v. support role - CRM objectives - CRs as a resource Provide concluding remarks and hints for successfully dealing with the CRM program	Visual 3 Visual 5	Discussion TN	CRM binder

COURSE NOTES

INTRODUCTION TO CULTURAL RESOURCE MANAGEMENT

I. Cultural Resource Management (CRM): Its Role in Multiple-Use

A. CRM -- What is it?

Keep this brief but use it to introduce the concept of Cultural Resource Management. The instructor may want to write the term "Cultural Resource Management" on a flip chart or chalkboard and underline Management.

- CRs are resources for which BLM is responsible for managing, not just a "thing" that interferes with BLM's management responsibilities.

- CRs are one of many resources managed by BLM:

1. It is a resource either identified as an object or a location on the ground (i.e., a mapable property) that has "value" to some group (e.g., archaeologists or Native Americans).

2. It has a succession of laws that direct its use, protection and management on Federal land, as well as addresses the effects of Federal actions on non-Federal CR resources.

B. What are Cultural Resources?

1. Cultural resource definitions:

This section is intended as an interactive (trainee participation) exercise. Ask the trainees for definitions or examples of "cultural resources". Using a flip chart or chalkboard, record the trainees' responses. Briefly discuss the responses in relation to the terms and BLM definition provided below. A hands-on exercise using artifacts could also be used at this point.

- CRs include scientific and socio-cultural values:

Scientific	{	Archaeological
		Historic
Socio-cultural		

-Prehistoric and historic (not paleontology)

-BLM Manual 8100 Glossary of Terms:

Cultural Resources - Those fragile and nonrenewable remains of human activity, occupation, or endeavor, reflected in district, sites, structures, buildings, objects, artifacts, ruins, works of art, architecture, and natural features, that were of importance in human events. These resources consists of (1) physical remains, (2) areas where significant human events occurred -- even though evidence of the event no longer remains, and (3) the environment immediately surrounding the actual resource. Cultural resources, including both prehistoric and historic remains, represent a part of the continuum of events from the earliest evidences of man to the present day.

-BLM Draft Counterpart Regulations:

"Cultural resource" means any cultural property, including records and physical remains related to such property, and any traditional lifeway value.

"Cultural property" means any definite location of past human activity, occupation, or use, identifiable through field inventory (survey), historical documentation, or oral evidence, such term may include archaeological, historic, or architectural sites, structures, or places, or sites or places of traditional cultural or religious importance to specified social and/or cultural groups, whether or not represented by physical remains.

"Traditional lifeway value" means the quality of being useful in or important to the maintenance of a specified social and/or cultural group's traditional system of religious belief, cultural practice, or social interaction, not closely identified with specific locations.

2. Video: "LEGACY - Our Cultural Resource Heritage"

The video is designed to provide a quick bureauwide visual of the BLM's CRs and CRM responsibilities. The instructor may want to add a brief (e.g., 3 to 5 minutes) slide presentation oriented to the CRs of the particular District, Resource Area or State in which the module is being given. The video also provides a brief definition of "cultural resources" consistent with the definition in BLM booklet Your Fragile Legacy.

- A 7 1/4-minute video providing a brief introduction to the wide BLM administered lands and to the BLM's CRM responsibilities.

- Reference BLM booklet Your Fragile Legacy

C. The Elements of BLM's CRM Program

This section is designed to provide the instructor an opportunity to briefly discuss the BLM's primary CRM program and its five major elements. The points to discuss are outlined below. The handout entitled "Summary of BLM's Cultural Resource Management Program" should be referenced. Also use Visuals 2 and 3 here. Visual 2, Major Elements of the BLM Cultural Resource Program Chart, was designed to show the relationship between the various elements of the CRM program and to illustrate that the program is a complete BLM program. This is only a visual aid and its use is intended only to leave an impression with the trainees regarding the completeness of the BLM CRM program. On the other hand, Visual 3, BLM's Primary CRM Program, provides an outline of the BLM's primary CRM program, identifying the five major elements and corresponding subject-function codes. This visual can be used to work from when briefly presenting the five major CRM program elements. Also at this point it would be appropriate to mention what the CRM program is not (e.g., it does not include paleontology). The handout "Extracts from BLM Manual 8100" discusses relationships with other BLM programs.

VISUAL 2

1. Primary Program vs. Support Role

- Primary. program is that funded by the CR portion of the 4331 subactivity (i.e., activities primarily benefiting the BLM's responsibility in managing CRs).

- Support role is CR work funded by other subactivities. This work is done mostly to meet the BLM's CR compliance responsibilities related to various undertakings.

VISUAL 3

2. Inventory and Evaluation

- Inventory is the identification and recordation of CRs.

- Evaluation is the determination of actual or potential use of individual sites or properties and the placement of these sites or properties into specific use categories.

3. Nominations and Planning

- Nominations involve the preparation and/or coordination of not only National Register of Historic Places nominations, but also nominations to other Federal (e.g., National Historic Landmarks, Historic American Building Survey and Historic American Engineering Record), State and local cultural resource registry systems.

- Planning involves the preparation of Cultural Resource Management Plans (CRMPs), the CR activity plan component of BLM's planning system and action documents of the CRM program. CRMPs are prepared to implement protection and use programs for CRs, consistent with CR management goals identified in land-use plans.

4. Protection and Use

- Protection is the application of both administrative and physical measures to CRs.

- Use involves making CRs available for scientific and sociocultural use, consistent with the specific use and protection objectives for the resource. CR permits are used as a tool in managing the scientific use of CRs.

II. Cultural Resource Directives You Should Know

A. Historical Background: Over Three-Quarters of a Century of Laws.

The presentation of this section need only consist of a very brief statement (i.e., 1 minute or less) incorporating the points identified below and providing a lead-in to a short, general introduction to the categories of CR laws.

- CRM program has legislation equal to such programs as minerals, lands, range or wildlife.

- CRM legislation consists of 10 major laws (see Summary of Major Cultural Resource Laws).

- CRM legislation runs the gambit from the Antiquities Act of 1906 to the National Historic Preservation Act Amendments of 1980.

B. Categories of Cultural Resource Laws

These categories point out that all four "bases" are covered. The final category, "Awareness", is statements of Federal policy to tie specific CRM concerns in with other responsibilities. Use Visual 4, Categories of Cultural Resource Laws, to talk from and refer to the handout "Summary of Major Cultural Resource Laws."

-Ten major laws can be separated into 4 general categories. These categories are useful in understanding the dominant use or purpose of each law. These categories are as follows:

VISUAL 4

1. Criminal/Civil Protection (Law Enforcement)

- Antiquities Act of 1906
- Archaeological Resources Protection Act of 1979

2. Administrative Protection

- National Historic Preservation Act of 1966
- National Environmental Policy Act of 1969
- National Historic Preservation Act Amendments of 1980

3. Data Recovery Authority

- Reservoir Salvage Act of 1960
- Archaeological and Historic Preservation Act of 1974

4. Awareness

- Historic Sites Act of 1935
- Federal Land Policy and Management Act of 1976
- American Indian Religious Freedom Act of 1978

C. BLM's CRM Policy and Objectives

Introduce BLM's CRM policy and objectives as started in BLM Manual 8100.06 and .02. Refer to handout "Extracts from BLM Manual 8100". The policy and objectives incorporate the major points of the 10 laws previously introduced and are fully in line with the BLM's overall multiple-use mission. Visual 5, Summary of BLM's Cultural Resource Management Objectives, can be used to stress the major points of the BLM's CRM program objectives.

1. General Policy

- The BLM's general policy as stated in BLM Manual 8100.06, is as follows:

a. The Bureau protects and manages the cultural resources under its jurisdiction or control and avoids inadvertent loss or destruction of cultural resources.

b. Cultural resources are recognized as fragile, nonrenewable resources with scientific and socio-cultural values representing an important and integral part of our Nation's heritage. Being responsible for the largest remaining cultural resource base on Federal lands, the Bureau develops and maintains the capability needed to manage these resources.

2. Major Objectives

- The major objectives of the BLM's CRM program as stated in BLM Manual 8100.01, are as follows:

a. Protect and preserve representative samples of the full array of cultural resources for the benefit of scientific and socio-cultural use by present and future generations.

b. Ensure that cultural resources are given full consideration in all land-use planning and management decisions.

c. Manage cultural resources so that scientific and sociocultural values are not diminished, but rather maintained and enhanced.

d. Ensure that the Bureau's undertakings avoid inadvertent damage to cultural resources, both Federal and non-Federal.

3. Policy/Objectives Summary

- The major points of the general policy are found within the objectives.

VISUAL 5

- The objectives cover both the primary and support roles of the BLM's CRM program:

a. PROTECT and preserve representative samples (not everything!

b. CONSIDER in all land-use planning and management decisions (don't ignore or forget about CRs).

c. MANAGE (like other BLM resource management responsibilities).

d. AVOID inadvertent damage to CRs by BLM undertakings.

D. ACHP, SHPO and 36 CFR 800 - The Process

This section is intended as a general introduction to the Section 106 compliance review process. At least 30 minutes are needed to present and briefly discuss this process. The specific Memorandum of Understanding which each BLM State Office may have with their respective SHPO(s) can also be brought in here. The points outlined below should be discussed, especially BLM's responsibilities under 36 CFR 800.4. These 8 basic steps are displayed in Visuals 6 and 7. Visual 6, Advisory Council Regulations for the Protection of Historic and Cultural Properties, is the ACHP's chart with numbers added to coincide with the 8 steps. The chart is intended as a visual reference and shows that the process can be as complicated or as simple as one chooses to make it. Visual 7, Eight Basic Steps of Section 106 Compliance Review, provides an abbreviated version of the 8 steps discussed below. Visual 8, Section 106 Compliance Review Elements, is to be used to discuss the three elements that must be present to "trigger" compliance. Visual 9, Section 106 Compliance Review Summary, is to be used to summarize the process and to emphasize the three basic points (i.e., identify, consult and consider). It also can be pointed out that the BLM's relationship with the various SHPOs have greatly simplified this process. The BLM rarely, if ever, gets caught in the "maze" in the lower right-hand portion of the chart.

- What many, including BLM CRM specialists, refer to as the "law" is really a regulation, 36 CFR Part 800.

- First in effect in January 1974 and later amended in 1979 (effective March 1, 1979), 36 CFR Part 800 are the regulations of the Advisory Council on Historic Preservation (a Presidential and Congressional advisory council established under Title II of NHPA).

- Section 800.4 of 36 CFR 800 lays out the Federal agency responsibilities and is binding on all Federal agencies, including BLM.

VISUAL 6

- BLM has more flexibility under these regulations than it may have realized in the past or more than a SHPO may want to realize or admit.

VISUAL 7

- Under 36 CFR 800.4, the BLM's responsibilities are basically as follows:

1. Determine the "area of the undertaking's potential environmental impact," in consultation with the State Historic Preservation Officer (SHPO), Subsection 800.2(o).

2. Identify properties listed on or eligible for listing on the National Register of Historic Places, and which may be affected by the undertaking, in consultation with the SHPO, Subsection 800.4(a)(1).

3. Determine what further actions are necessary to discharge the Bureau's affirmative responsibilities to locate and identify additional eligible properties that may be within the area of the undertaking's potential environmental impact and that may be affected by the undertaking, Subsection 800.4(a)(2).

4. Apply the National Register criteria to all potentially eligible properties within the area of the undertaking's potential environmental impact, in consultation with the SHPO, Subsection 800.4(a)(3). When the BLM and the SHPO agree on eligibility, a consensus exists, the section 106 review process may proceed.

5. Request a determination of eligibility, in accordance with 36 CFR Part 63, for all potentially eligible properties which may be affected and for which a consensus determination cannot be made, Subsection 800.4(a)(3).

6. Apply the Criteria of Effect, Subsection 800.3(a), in consultation with the SHPO, Subsection 800.4(b).

- a. If no effect is determined, document with SHPO's comment, Subsection 800.4(b)(2).

- b. If effect is determined, apply Criteria of Adverse Effect, Subsection 800.4(b)(2).

7. Apply the Criteria of Adverse Effect, Subsection 800.3(b), in consultation with SHPO, Subsection 800.4(b)(2).

a. If no adverse effect is determined, document with SHPO's comments and forward to the Council's Executive Director for review, Subsection 800.4(c).

b. If adverse effect is determined or the Executive Director disagrees with the no adverse effect determination, prepare a Preliminary Case Report, in accordance with Subsection 800.13(b) and submit report to the Council for comment, Subsection 800.4(d).

8. Suspend all actions that could result in adverse effects on National Register or eligible properties until the Council issues its comments, Subsection 800.4(e).

- It should be noted that if a no adverse effect determination cannot be obtained, then the Council's consultation process, as described in Subsection 800.6(b), is put into motion. This process can be long and involved.

- With (1) adequate inventory data, (2) proper project planning, and (3) appropriate coordination with the SHPO, no adverse effect determination should be obtainable for the majority of BLM undertakings.

- However, if it is anticipated or apparent that the full consultation process will be necessary, then adequate time must be planned.

- 106 review procedure can be a simple or complicated process depending on the principle persons involved (i.e., CR specialists, management, SHPO, etc.) and their understanding of the process.

- To keep this a simple process, one must recognize the 3 elements that must be present to "trigger" compliance:

- (1) First, there must be an understanding;

- (2) Second, there must be CRs present; and

- (3) Third, the CRs must have the potential of being affected by the understanding.

- Without all 3 of these elements being present, the full CR compliance review process is not required.

PROBLEMS

- Management's reluctance to support CR or understand the process or get involved early, etc.
- CR specialists single or narrow-minded view of the process.
- Mistrust or lack of team effort between various BLM specialists (e.g., lands and CRs).

SUMMARY

- Section 106 demands essentially 3 things of a Federal agency considering the plan or approval of an undertaking that may effect CRs.
- (1) To identify properties listed on the National Register of Historic Places, or eligible for listings, and which are potentially affected by the undertaking;
 - (2) To consult with the Advisory Council on Historic Preservation (usually via the SHPO) on the undertaking's potential effects on the identified properties., and
 - (3) To consider the CRs in planning and implementing the undertaking.

III. Case Studies

This exercise should not consume more than one hour.

- Purpose: To apply the CR compliance process to case studies.
- Explain and discuss the 3 case studies and the instructions.
- Use 3 groups, each with a different case study.
- Work through case studies in assigned groups, present results, and discuss.

IV. Wrap-Up -- What This Means to You

Ensure that at least 10 to 15 minutes are available at the end of the module presentation to provide a wrap-up.

- CRM is a BLM program with its own arsenal of laws, policies and procedures.

- CRs are resources which BLM has a responsibility to manage.

- If resource specialists can understand the general aspects of the Bureau's CRM program and "compliance process" it will be easier to avoid unnecessary problems.

- Also, it will be easier to deal with CR specialists who can either help or hinder your specific programs or projects.

- Reminder. CRs are a resource not just a hindrance.

CRM VISUALS

- 1. COURSE OBJECTIVES**
- 2. CHART- MAJOR ELEMENTS OF THE
BLM CR PROGRAM**
- 3. BLM'S PRIMARY CRM PROGRAM**
- 4. CATEGORIES OF CR LAWS**
- 5. SUMMARY OF BLM'S CRM OBJECTIVES**
- 6. ACHP CHART**
- 7. EIGHT BASIC STEPS OF SEC. 106
COMPLIANCE REVIEW**
- 8. SECTION 106 COMPLIANCE REVIEW
ELEMENTS**
- 9. SECTION 106 COMPLIANCE REVIEW
SUMMARY**

INTRODUCTION TO CULTURAL RESOURCE MANAGEMENT

COURSE REVIEW

PART I - Complete the following statements:

- A. The basic objectives of BLM's Cultural Resource Management (CRM) Program are:
1. Protect and preserve representative samples.
 2. Consider in all land-use planning and management decisions.
 3. Manage for scientific and socio-cultural values.
 4. Avoid inadvertent damage.

PART II - Answer the Following:

5. List six types of cultural resources (CRs).

(A) <u>arrowhead</u>	(D) <u>Indian ruins</u>
(B) <u>pony express station</u>	(E) <u>intaglios</u>
(C) <u>petroglyphs</u>	(F) <u>mining relics</u>

PART III - Circle the Appropriate Letter:

6. Paleontological resources are considered to be cultural resources. T (F)
7. The National Park Service (NPS) has full responsibility/authority for managing cultural resources on Bureau-administered lands. T (F)
8. The Section 106 Compliance process identifies CR properties, consults with the SHPO, and considers CRs in planning and implementation of projects. (T) F
9. There are five cultural resource inventory classes. T (F)
10. The National Historic Preservation Act of 1966 expands the national Policy toward cultural resources to include those of state and local as well as national significance. (T) F
11. The primary program of cultural resource work is funded by other subactivities. This work is done mostly to meet the BLM's CR compliance responsibilities related to various undertakings. T (F)

13. Cultural resource management is the development and implementation of programs designed to inventory, evaluate, protect, preserve, and/or make beneficial use of cultural resources (including evidence of prehistoric, historic, and recent remains) and the natural resources that figured significantly in cultural systems. The objective of such programs is the conservation, preservation, and protection of cultural values through management, and the scientific study of these resources for the public good.

(T) F

PART IV - Match the description in Column 3 with the word in Column A by placing the correct letter from Column B in front of the word in Column A.

Column A	Column B
<u>D</u> 14. Cultural Resources	A. Adherence to cultural resource laws, regulations, executive orders, and other mandates designed to protect cultural resources. Such actions would include 106 Compliance as required by the Historic Preservation Act of 1966.
<u>B</u> 15. Avoidance	B. The partial or complete redesign or relocation of a project or action to eliminate the potential of impacts to a cultural resource.
<u>C</u> 16. Prehistoric	C. Pertaining to that period of time before written history.
<u>F</u> 17. Mitigation	D. Those fragile and nonrenewable remains of human activity, occupation, or endeavor, reflected in districts, sites, structures, buildings, objects, artifacts, ruins, works of art, architecture, and natural features, that were of importance in human events. These resources consist of (1) physical remains, (2) areas where significant human events occurred--even though evidence of the event no longer remains, and (3) the environment immediately surrounding the actual resources.

A 18. Compliance

E. A sample-oriented field inventory designed to locate and record, from surface and exposed profile indications, all cultural resource sites within a portion of a defined area in a manner which will allow an objective estimate of the nature and distribution of cultural resources in the entire defined area.

G 19. SHPO

F. The alleviation or lessening of possible adverse effects of an action upon a cultural resource by application of appropriate protection measures or adequate scientific study.

E 20. CR Class II
(Sampling Field)
Inventory

G. The official within each state, authorized by the state at the request of the Secretary of Interior, to act as a liaison for purposes of implementing the National Historic Preservation Act of 1966.

INTRODUCTION TO CULTURAL RESOURCE MANAGEMENT

**OBJECTIVES- AT THE COMPLETION OF THIS
SESSION PARTICIPANTS WILL
BE ABLE TO:**

- 1. STATE THE BASIC OBJECTIVES OF
BLM'S CULTURAL RESOURCE
MANAGEMENT (CRM) PROGRAM**
- 2. DISTINGUISH BETWEEN THE PRIMARY
CRM PROGRAM AND THE SUPPORT
ROLE**
- 3. LIST THE MAJOR ELEMENTS OF THE
CRM PROGRAM**
- 4. DESCRIBE THE BASIC STEPS OF THE
CULTURAL RESOURCE COMPLIANCE
(SECTION 106) PROCESS AND APPLY
THE PROCESS TO A BLM
UNDERTAKING**

VISUAL 1

DEFINITIONS

Archaeology: the scientific discipline responsible for recovering, analyzing, interpreting, and explaining the unwritten portion of man's historic and prehistoric past.

Archaeological resources: all prehistoric and historic physical evidence of past human activity, other than historical documents, which can be used to reconstruct lifeways and culture history of past peoples. These resources include sites, artifacts, environmental data, and all other relevant information and the contexts in which they occur.

Advisory Council on Historic Preservation: a council established under Title II of the National Historic Preservation Act of 1966 (NHPA), consisting of 19 members (four members of the public appointed by the President; the Secretary of the Interior and Secretary of Agriculture, the Architect of the Capitol and four other federal agency heads designated by the President; one governor and one mayor; the Chairman of the National Trust of Historic Preservation; four historic preservation experts appointed by the President; and the President of the National Conference of State Historic Preservation Officers (SHPO's). Under Section 106 of NHPA, the Advisory Council must be given an opportunity to comment on federal, federally assisted, or federally licensed undertakings that may affect properties listed in or eligible for listing in the National Register of Historic Places. In addition, the Advisory Council advises the President and the Congress on national preservation policy.

Avoidance: the partial or complete redesign or relocation of a project or action to eliminate the potential of impact to a cultural resource.

Class I (Existing Data) Inventory: a professionally prepared study of existing cultural resource data from published and unpublished documents, BLM cultural resource inventory records, institutional site files, State and National registers, and other information sources, leading to a compilation and analysis of all available data and a synthesis of the data (narrative overview). Class I inventories may have prehistoric, historic, and ethnological/sociological elements and are periodically updated to incorporate new data, resulting from Class II and Class III inventory and other studies, in both the compilation and the synthesis.

Class II (Field Sampling) Inventory: a professionally conducted, statistically based sample survey, designed to characterize the probable density, diversity, and distribution of cultural properties within a large area, through projection of the results of intensive field survey carried out over limited portions of the target area. Within individual sample units, survey aims, methods, and intensity are the same as those applied in Class III inventory. A Class II inventory may be conducted in several phases using differing sample designs to improve statistical reliability.

Class III (Intensive Field) Inventory: a professionally conducted intensive survey of an entire target area, aimed at locating and recording all cultural properties that have surface and exposed-profile indications, through systematic inspection commonly carried out by a crew of trained observers walking series of close-interval parallel transects until the area has been thoroughly examined.

Cultural property: any definite location of past human activity, occupation, or use, identifiable through field inventory (survey), historical documentation, or oral evidence; such term may include archaeological, historic, or architectural sites, structures, or places, or sites or places of traditional cultural or religious importance to specified social and/or cultural groups, whether or not represented by physical remains.

Cultural resource: any cultural property, including records and physical remains related to such property, and any traditional lifeway value.

Cultural resource management: the development and implementation of programs designed to inventory, evaluate, protect, preserve, and make beneficial use of cultural resources (including evidence of prehistoric, historic, and recent remains) and the natural resources that figured significantly in cultural systems. The objective of such programs is the conservation, preservation, and protection of cultural values through management, and the scientific study of these resources for the public good.

Data recovery: the recovery of information and materials from cultural properties by the professional applying of scientific techniques of controlled observation, contextual measurement, controlled collection, excavation, and/or removal of physical remains, including the analysis, interpretation, explanation, and curatorial safeguarding of recovered remains and associated records in an appropriate public institution. It may also include the recovery of information related to traditional lifeway values through the collection of historical and/or anthropological data, such as oral histories, genealogies, folklore, and related data.

Historic resources: all evidences of human activity that date from historic (i.e., recorded history) periods. These resources include documentary data (i.e., written records, archival material, photographs, maps, etc.), sites, artifacts, environmental data, and all other relevant information. Also included are locations where documented historical events took place, even though no physical evidence of the events remain other than the setting. Historic resources are cultural resources that may be considered archaeological resources when archaeological work is involved in their identification and interpretation.

Mitigation: the alleviation or lessening of possible adverse effects of an action upon a cultural resource by applying appropriate protection measures or adequate scientific study.

National Register of Historic Places: the official list, established by the Historic Preservation Act of 1966, of the Nation's cultural resources worthy of preservation. The Register lists archaeological, historic, and architectural properties (i.e., districts, sites, buildings, structures, and objects) nominated for their local, State, or national significance by state and federal agencies and approved by the National Register staff. The Register is maintained by the National Park Service.

Scientific value: the importance attributed to a cultural resource by scientists and historians because of the information it contains, which will contribute to the understanding of human behavior.

Socio-cultural value: the importance attributed to an object (including flora and fauna), structure, place, living thing, lifestyle, or belief by a group based on the group's perception of the object's role in maintaining their heritage or their existence as a group. Usually expressed in qualitative rather than quantitative terms.

State Historic Preservation Officer (SHPO): the official who is appointed by a state's governor to be responsible for administering the State Historic Preservation Program under Section 101(b)(1) of the National Historic Preservation Act.

Traditional lifeway value: the quality of being useful in or important to the maintenance of a specified social or cultural group's traditional system of religious belief, cultural practice, or social interaction, not closely identified with specific locations.

SUMMARY OF BLM'S CULTURAL RESOURCE MANAGEMENT PROGRAM

BLM manages cultural resources on the public lands to protect and provide for the proper use of those resources. Cultural resources include archeological, historic, and socio-cultural properties. The degree of management is commensurate with the scientific or socio-cultural values of the resource, the degree of threat, and the resource's vulnerability. Under this concept, BLM attempts to protect a representative sample of the full array of cultural resources, both prehistoric and historic, found on BLM-administered land.

Federal laws such as the National Historic Preservation Act, Archeological and Historic Preservation Act, Archeological Resources Protection Act, American Indian Religious Freedom Act and Federal Land Policy and Management Act provide for the protection and management of cultural resources.

Inventory and Evaluation

BLM undertakes and maintains a cultural resource inventory for all the lands it administers. These inventories fall into three classes: Class I--Existing inventory or literature search; Class II--Sampling field inventory (all sampled units are inventoried to Class III standards); and Class III-Intensive field inventory. In most cases, a Class III inventory is required before any surface may be disturbed.

BLM maintains a cumulative site inventory file documenting the locations of all known sites, all areas surveyed, and areas known to be devoid of cultural resources. Sites on public land will be evaluated according to a use evaluation system. The purposes of this system are to analyze the scientific, socio-cultural, and public values of cultural resources to provide a basis for allocating these resources and to identify information needed when existing documentation is inadequate to support a reasonable land use allocation.

In evaluations of cultural resources, BLM considers actual or potential use of individual sites or properties within the following categories: (1) Current Scientific Use, (2) Potential Scientific Use, (3) Conservation for Future Use, (4) Management Use, (5) Socio-Cultural Use, (6) Public Use, and (7) Discharged Use.

Nominations

BLM prepares and submits nominations of priority cultural resource properties on public lands to the National Register of Historic Places. BLM also coordinates with other agencies and organizations in nominating cultural resources eligible for inclusion in other federal, state and local cultural resource registry systems.

Planning

BLM prepares cultural resource management plans (CRMPs) to implement cultural resource protection and use objectives developed through the BLM's land use planning system. CRMPs are the cultural resource activity plan component of the BLM's planning system and the action documents of the Cultural Resource Management Program. CRMPs conform to the cultural resource management goals and objectives in land use plans. CRMPs are developed for specific cultural resource properties (sites or districts), areas of critical environmental concern (ACECs), other areas identified in land use plans (special management areas) or a specific class of cultural resources. CRMPs also establish the nature and sequence of actions to achieve the identified objectives.

Protection and Utilization

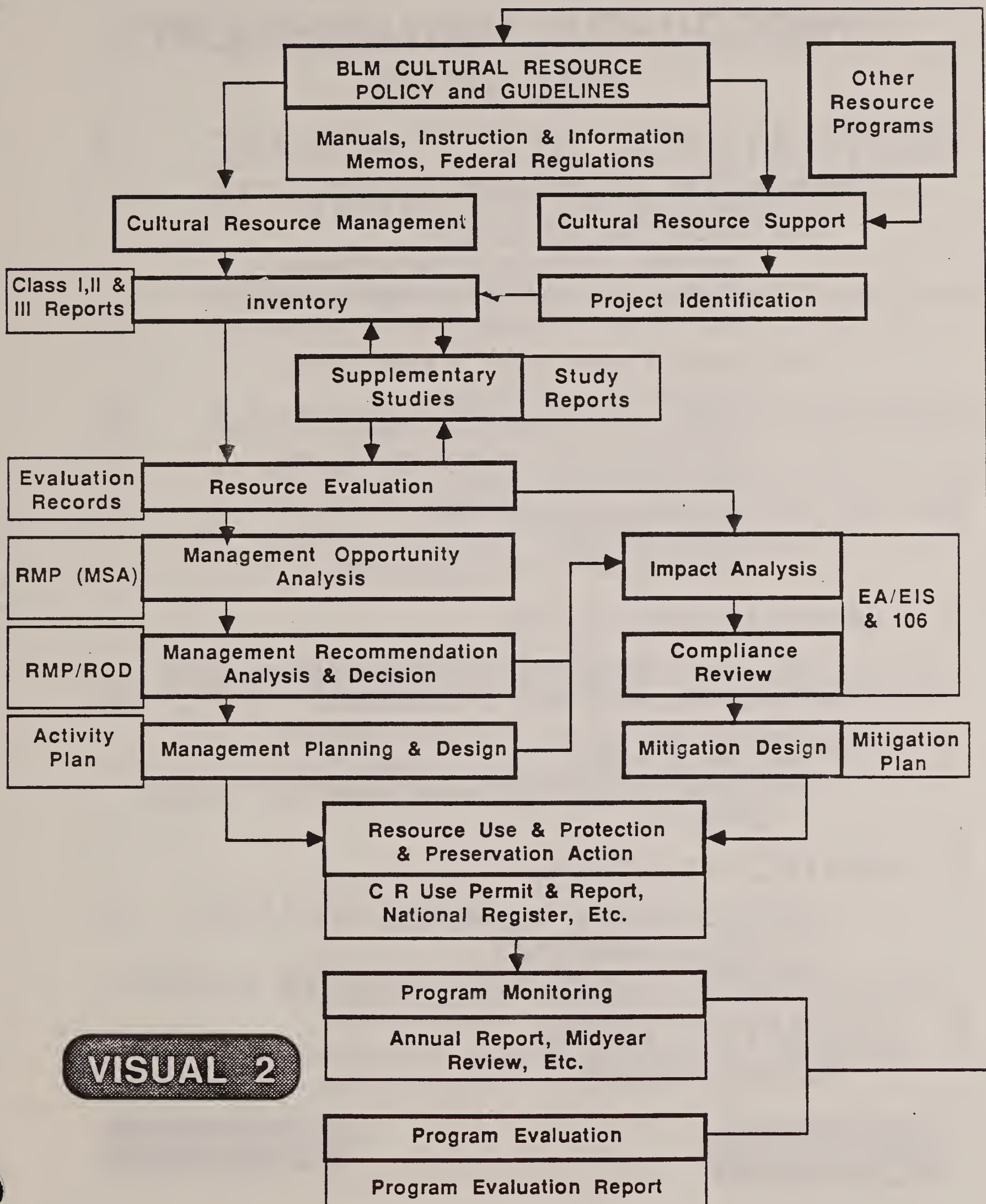
BLM's Cultural Resource Management Program provides for the protection of cultural resources by applying both administrative and physical measures, as required by the cultural resource's scientific and socio-cultural value, vulnerability, and degree of threat.

BLM issues cultural resource use permits for cultural resource inventory, collection, and excavation on public land. These permits are an important tool in managing the scientific use of cultural resources. In addition, BLM allows cultural resources to continue to be used for scientific and socio-cultural use, consistent with the specific use and protection objectives for the resources.

Compliance

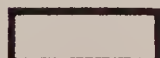
Compliance is the support role of BLM's CRM program. As part of its compliance responsibilities, BLM considers the effects of its actions or authorizations on cultural resources. Adverse impacts to cultural resources are avoided whenever possible or practical. When adverse impacts caused by BLM projects or BLM-authorized actions cannot be avoided, mitigation may be conducted. The nature of mitigation applied depends upon the impact and the scientific and socio-cultural values of the resource involved. As required, these actions are coordinated with the State Historic Preservation Officer and the National Advisory Council on Historic Preservation.

MAJOR ELEMENTS OF THE BLM CULTURAL RESOURCE PROGRAM



VISUAL 2

LEGEND



Program Element



Program Element Primary Documentation

BLM'S PRIMARY CULTURAL RESOURCE MANAGEMENT PROGRAM

1. INVENTORY AND EVALUATION (8110)

CR INVENTORY CLASSES:

- CLASS I -EXISTING DATA INVENTORY**
- CLASS II -SAMPLING FIELD INVENTORY**
- CLASS III -INTENSIVE FIELD INVENTORY**

CR EVALUATION (USE) CATEGORIES:

- CURRENT SCIENTIFIC USE**
- POTENTIAL SCIENTIFIC USE**
- CONSERVATION FOR FUTURE USE**
- MANAGEMENT USE**
- SOCIO-CULTURAL USE**
- PUBLIC USE**
- DISCHARGED USE**

2. NOMINATIONS (8120)

**NATIONAL REGISTER OF HISTORIC PLACES
NATIONAL HISTORIC LANDMARKS**

3. PLANNING (8130)

**CULTURAL RESOURCE MANAGEMENT PLANS
(CRMP'S)**

4. PROTECTION (8140)

**ADMINISTRATIVE MEASURES
PHYSICAL MEASURES
AVOIDANCE AND/OR MITIGATION OF EFFECTS**

5. UTILIZATION (8150)

CR USE PERMITS

VISUAL 3

CATEGORIES OF CULTURAL RESOURCE LAWS

1. CRIMINAL/CIVIL PROTECTION (LAW ENFORCEMENT)

*ANTIQUITIES ACT OF 1906

*ARCHAEOLOGICAL RESOURCES PROTECTION
ACT OF 1979

2. ADMINISTRATIVE PROTECTION

*NAT'L HISTORIC PRESERVATION ACT OF 1966

*NAT'L ENVIRONMENTAL POLICY ACT OF 1969

*NAT'L HISTORIC PRESERVATION ACT
AMENDMENTS OF 1980

3. DATA RECOVERY AUTHORITY

*RESERVOIR SALVAGE ACT OF 1960

*ARCHAEOLOGICAL AND HISTORIC
PRESERVATION ACT OF 1974

4. AWARENESS

*HISTORIC SITES ACT OF 1935

*FEDERAL LAND POLICY AND MANAGEMENT
ACT OF 1976

*AMERICAN INDIAN RELIGIOUS FREEDOM
ACT OF 1978

VISUAL 4

SUMMARY OF MAJOR CULTURAL RESOURCE LAWS

1. Antiquities Act of 1906 (P.L. 59-209; 34 Stat. 225; 16 U.S.C. 432, 433) is the first legislation specifically for the preservation and protection of antiquities on all federal land. It provided penalties for the removal or destruction of antiquities without a Secretarial permit; provided for the establishment by Presidential proclamation of national monuments from the public lands; and provided for permits for investigation of cultural and scientific resources to be issued to public, scientific, and educational institutions.
2. Historic Sites Act of 1935 (P.L. 74-292; 49 Stat. 666; 16 U.S.C. 461 et seq) declared it a national policy to identify and preserve for public significance for the inspiration and benefit of the people.
3. Reservoir Salvage Act of 1960 (P.L. 86-523; 74 Stat. 220, 221; 16 U.S.C. 469) provided for the preservation of historical and archaeological data that might otherwise be lost as the result of the construction of a federally funded or licensed dam or reservoir. Before any reservoir of over 5,000 acre-feet or 40 surface acres can be built, it has to be surveyed for archaeological and historical values and any values found must be salvaged.
4. National Historic Preservation Act of October 15, 1966 (P.L. 89-665; 80 Stat. 915; 16 U.S.C. 470), as amended (P.L. 94-422; 90 Stat. 1313; and P.L. 94-458; 90 Stat. 1939), expanded the national policy toward cultural resources to include those of State and local as well as national significance. It also established the National Register of Historic Places, the Advisory Council on Historic Preservation, State Historic Preservation Officers, and a matching grants-in-aid program for the National Trust. Section 106 directed all federal agencies to consider the effects of their actions on properties included in or eligible for inclusion in the National Register and affords opportunities for the Advisory Council on Historic Preservation to comment on the proposed actions and their effects. The act was amended to provide for the withholding from disclosure to the public of information relating to the location of sites or objects listed on the National Register if the disclosure of specific information would create a risk of destruction or harm to such sites or objects.
5. National Environmental Policy Act of 1969 (P.L. 91-190; 83 Stat. 852; 42 U.S.C. 4321) established national policy for protection and enhancement of the environment. The act stated the part of the function of the Federal Government in protecting the environment is to "preserve important historic, cultural, and natural aspects of our national heritage."
6. Archeological and Historic Preservation Act of 1974 (P.L. 93-291; 88 Stat. 174; 16 U.S.C. 469) amended the Reservoir Salvage Act to include all federally funded construction projects. The amendment extended the act to include any federal construction project or federally licensed or assisted activity or program affecting cultural resources. The act provided for up to 1

percent of funds from the program or construction project affecting cultural resources to be spent to recover, preserve, and protect the cultural resource data.

7. Federal Land Policy and Management Act of 1976 (P.L. 94-579; 90 Stat. 2743; 43 U.S.C. 1701) directed the BLM to manage public lands on the basis of multiple use, and in a manner that will "....protect the quality of scientific, historical,environmentalresources, and archeological values," and that, where appropriate, will preserve and protect certain public lands in their natural condition. The act required the inventory of public land; provided for long-range, comprehensive resource planning; and provided for the enforcement of public land laws and regulations.

8. American Indian Religious Freedom Act of 1978 (P.L. 95-341) declared it Federal policy to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut and Native Hawaiians, including access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites.

9. Archaeological Resources Protection Act of 1979 (P.L. 96-95; 93 Stat. 721; 16 U.S.C. 470 aa--27) provided protection of archaeological resources on public lands in the form of permits for excavation and removal; criminal and civil penalties for the illegal excavation, removal, damage, sale, purchase, or exchange; rewards and forfeiture; and confidentiality of information provisions.

10. National Historic Preservation Act Amendments of 1980 (P.L. 96-515; 80 Stat. 915; 16 U.S.C. 470) incorporated the major parts of Executive Order 11593 ("Protection and Enhancement of the Cultural Environment," May 13, 1971); established statutory responsibility for managing Federally-owned historic properties, inventory and nominations, recording historic buildings to be lost, and designation of federal agency preservation officers; expanded Section 106 to pay greater attention to national historic landmarks; and authorized federal agencies to include reasonable costs for identification, survey, evaluations and data recovery as a condition to the issuance of federal licenses or permits.

EXTRACTS FROM BLM MANUAL 8100 - CULTURAL RESOURCE MANAGEMENT

.02 Objectives. The cultural resource program is designed to inventory, evaluate, plan, and manage cultural resources on lands administered by the Bureau and in areas of Bureau responsibility. The objectives of the program are to:

A. Protect and preserve representative samples of the full array of cultural resources for the benefit of scientific and socio-cultural use by present and future generations.

B. Ensure that cultural resources are given full consideration in all land-use planning and management decisions.

C. Manage cultural resources so that scientific and socio-cultural values are not diminished, but rather maintained and enhanced.

D. Ensure that the Bureau's undertakings avoid inadvertent damage to cultural resources, both Federal and non-Federal.

.06 Policy. It is Bureau policy that:

A. The Bureau protects and manages the cultural resources under its jurisdiction or control, and avoids inadvertent loss or destruction of cultural resources.

B. Cultural resources are recognized as fragile, nonrenewable resources with scientific and socio-cultural values, representing an important and integral part of our Nation's heritage. Being responsible for the largest remaining cultural resource base on Federal lands, the Bureau develops and maintains the capability needed to manage these resources.

.07 Responsibility for Non-Federal Cultural Resources.

A. The Bureau assures that its actions or authorizations take into consideration their effects on cultural resources located on non-Federal land.

B. The Bureau undertakes, or has undertaken, the inventory and evaluation of cultural resources on all non-Federal lands within the area of potential environmental impact by a Bureau project or Bureau-authorized action. The level of inventory required depends upon the type of action being considered and the nature of the cultural resource involved.

C. The Bureau mitigates, or has mitigated, direct effects upon non-Federal cultural resources caused by Bureau projects or Bureau-authorized

actions. The degree of mitigation implemented depends upon the impact and the scientific and socio-cultural values of the resource involved.

D. Cultural resource materials (e.g., artifacts) recovered from non-Federal land remain the property of the landowner. Data acquired in the form of studies, notes, or analyses are always the property of the United States when the cultural resource work is funded by the Federal Government.

E. Inventory and/or mitigation can be undertaken as a stipulation of a lease, permit, or license whenever the specific approval authority allows.

.08 Program Relationships

A. Relationship to Bureau Programs

1. Recreation Management Program

a. Recreation use of cultural resource properties for public education/interpretation purposes is managed through the Bureau's Recreation Management program in coordination with the cultural resource program.

b. When cultural resources are used for recreation purposes, such recreational use must be managed to meet the cultural resource protection objective as stated in the approved MFP (or RMP).

c. Reconstruction, restoration, and replication of cultural resources are undertaken by the Bureau to meet recreation management program objectives. Consequently, these activities are not undertaken as a part of the cultural resource management program.

d. Interpretation of cultural resources for public education and enhancement is a recreation program function. The cultural resource program does limited interpretation, but only as a part of its protection objective.

e. The cultural resource management program provides to the recreation program:

(1) Cultural resource inventory and evaluation data that can be analyzed from a recreation opportunity standpoint;

(2) Cultural resource management expertise which the recreation program can use for interpretation, reconstruction, restoration, or other recreation functions.

2. Other Resource Programs

a. Compliance Requirements. Legislative mandates require that all Bureau resource programs undertake certain cultural resource inventory, evaluation, compliance, and mitigation work for any of their actions that might affect cultural resources. Procedures developed by the cultural resource program are utilized by other resource programs to do this work. All Bureau programs, as benefiting activities, are responsible for funding:

(1) Cultural resource inventories and evaluations needed to ensure compliance, beyond that data provided by the cultural resource program through the URA (or RMP);

(2) Compliance documentation for Section 106 of the National Historic Preservation Act of 1966 (NHPA);

(3) Cultural resource protection work needed to mitigate effects of their projects upon cultural resources.

b. Paleontological Resources. Although protected by the Antiquities Act, paleontological resources are not, in general, considered to be cultural resources. Consequently, management of paleontological resources is not a function of the cultural resource management program.

SUMMARY OF BLM'S CULTURAL RESOURCE MANAGEMENT OBJECTIVES

**OBJECTIVES COVER BOTH THE PRIMARY
AND SUPPORT ROLE OF THE BLM'S CRM
PROGRAM:**

- 1. PROTECT AND PRESERVE
REPRESENTATIVE SAMPLES**
- 2. CONSIDER IN ALL LAND-USE
PLANNING AND MANAGEMENT
DECISIONS**
- 3. MANAGE FOR SCIENTIFIC AND
SOCIO-CULTURAL VALUES**
- 4. AVOID INADVERTENT DAMAGE**

VISUAL 5

Guidelines for Consultation with the SHPO
Under Section 106 and 36 CFR 800.4

Legal/Regulatory Requirements

Section 106. Section 106 of the National Historic Preservation Act requires Federal agency officials (1) to take into account the effect of a proposed Federal, federally assisted, or federally licensed undertaking on any cultural property eligible for or included in the National Register of Historic Places, and (2) to give the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking.

36 CFR 800.4. Section 800.4 ("Federal agency responsibilities") of the Advisory Council's regulations establishes a detailed process by which the requirements of section 106 are to be met. This process is binding on all agencies which have not put counterpart regulations into effect. For complex undertakings or repetitive actions of the same kind, the process may be amended and streamlined through programmatic memoranda of agreement.

The Steps of 36 CFR 800.4

General requirements. Section 800.4 begins with an introductory paragraph, as much a part of the section as the remainder, which sets out general timing, information, and role requirements. As provided in this paragraph, the section's procedures shall be followed as early as possible before an agency makes a final decision concerning a proposed undertaking, and before actions are taken that would foreclose alternatives to the proposal or the Advisory Council's opportunity to comment usefully.

Guideline: It is in our best interest to initiate pre-consultation discussion with the SHPO as soon as we have a proposal in hand that has sufficient detail to locate and describe the undertaking. Give the SHPO some advance preparation time. Section 106 review should be begun and carried out simultaneously with environmental analysis whenever possible.

Further, it is the responsibility of the agency to conduct the appropriate studies and to provide the information necessary for an adequate review.

Guideline: While this responsibility clearly applies later in the process it should also guide us from the outset. The SHPO probably does not have as much reason or as much basis as we do for knowing the kinds of cultural properties that may be present in the area of the proposed undertaking. Our preparation should be complete enough before entering consultation that we, not the SHPO, are the experts on our own situation.

And finally, ultimate responsibility for compliance with these regulations remains with the Federal agency and cannot be delegated to another party.

Guideline: We may require land-use applicants to take a role in the accountability process, compiling or gathering cultural resource data, and they must provide us with information on their proposals, but applicants and their cultural resource consultants should be made aware that they are not to "consult" with the SHPO except at our invitation.

Identification of National Register and eligible properties. Paragraph (a), with its four subparagraphs, describes the sequence of interactions with the SHPO necessary to identify listed or eligible cultural properties potentially affected by the undertaking. In subparagraph (a)(1), the agency official has an obligation to gain information apart from what the SHPO may provide. In addition to providing existing information in his/her keeping, the SHPO should recommend the type, methods, and boundaries of survey needed (if any).

Guideline: Do not go into consultation without a thorough and defensible proposition for how and where survey should be and need not be conducted. Develop a professionally sound and reasonable recommendation, backed by data on related survey and information on the land surface to be affected, that weighs probabilities of resource occurrence and significance against specifics of the undertaking and its location. Do not expect the SHPO to know more than we do. Let the SHPO benefit from our staff work.

Subparagraph (a)(2) requires the agency official to consider the SHPO's recommendation and determine what further steps are needed to locate and identify potentially affected properties. It states that the recommendation of the SHPO "should be followed."

Guideline: An ill-founded recommendation does not have to be followed, but to do less than recommended requires a sound reason. Document thoroughly the professional basis for any decision not to follow the SHPO's recommendation, and provide the SHPO with an information copy of the documentation, before proceeding with an alternate approach.

Under subparagraph (a)(3), the agency official and SHPO apply the National Register criteria to newly discovered properties, and to any previously known properties for which no prior eligibility determination has been made. In case of disagreement, a determination of eligibility must be requested from the Secretary. (Note: Subparagraph (a)(4) was suspended in 1982, so that now when the agency official and SHPO agree that a property is or is not eligible, no formal Secretarial determination of eligibility is needed.) If it is found that no National Register or eligible properties occur in the impact area, this finding is documented and the undertaking may proceed.

Guideline: For each property or group of similar properties, have a clear reason why it should or should not be considered eligible. For each one considered eligible, pay very close attention to defining the "quality of the . . . characteristics that qualify the property to meet the criteria of the National Register," as this is crucial in the next step. In the case of an archaeological property important for its information potential, pin down specifically what kind of important information it is thought to contain. If you are not able to do that, take a harder look at your conclusion that it is eligible. Undefined or inconsequential information is not a basis for eligibility.

Determination of effect. Paragraph (b) requires that the agency official and SHPO apply the criteria of effect (section 800.3(a)) to any National Register or eligible properties which might be impacted by the proposed undertaking. Subparagraph (b)(1) covers determinations of "no effect," which when documented

allow the proposed undertaking to proceed. Subparagraph (b)(2) covers "effect determined," which requires the agency official and SHPO to apply the criteria of adverse effect (section 800.3(b)).

Guideline: Confine determination of effect within the strict limits of section 800.3(a). The quality of the characteristics which contribute to a property's significance has to change before there is an effect. For example, even though an undertaking would affect the setting, feeling, or association of a property found to be eligible only because of its potential to yield information, if the undertaking would not change that information potential, there is no effect.

Determination of no adverse effect. If after applying the criteria of adverse effect the agency official and SHPO find the effect(s) not to be adverse, paragraph (c) requires documentation of the finding to be sent to the Advisory Council for review (see section 800.6(a)). The Advisory Council's Executive Director may accept or object to the determination.

Guideline: Whenever effect is determined, it is useful to initiate informal telephone communication with the Advisory Council staff. Any prior and further written exchanges with the SHPO should be copied to the Advisory Council. Advisory Council response time can be speeded up considerably, and Executive Director objection due to omissions or technical flaws can often be avoided, if the reviewing staff member is already "on board" when the documentation arrives formally.

Adverse effect determination. Paragraph (d) requires that upon determining adverse effect, the agency official shall prepare a preliminary case report (see section 800.13), request the comments of the Advisory Council, notify the SHPO of the request, and proceed to section 800.6 of the regulations. Among other things, section 800.6 seeks means of avoiding, mitigating, or minimizing adverse effect.

Guideline: The process may be shortcut here when the property subject to adverse effect is an archaeological property found eligible solely for its information potential. If we elect to mitigate potential adverse effect by means of data recovery, i.e. by realizing the information potential, the simpler "no adverse effect" documentation process may be followed (see p. 17 of the Advisory Council's "Treatment of Archeological Properties: A Handbook" on "negating" adverse effect).

Suspense of action. Paragraph (e) requires that "[u]ntil the Council issues its comments . . . good faith consultation shall preclude a Federal agency from taking or sanctioning any action or making any . . . commitment that could result in an adverse effect . . . or that would foreclose the consideration of modifications or alternatives to the proposed undertaking that could avoid, mitigate, or minimize such adverse effects."

Guideline: Do not put off consultation or consequent operations so that section 106 compliance is the last thing holding up a proposed land use. Allow sufficient time and inform the applicant that we may not issue an authorization, nor may the land use begin, until all required steps under section 800.4 have been completed.

Other Considerations

"Federally licensed action." Section 106 is addressed to "[t]he head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking . . . and the head of any Federal department or independent agency having authority to license any undertaking" In a few instances, BLM offices have attempted to interpret the word "license" narrowly, arguing that since BLM is not issuing a "license," section 106 should not apply. This is a mistaken argument. "Undertaking" is the key word in section 106. It is defined in section 800.2(c) of the regulations to cover nearly any surface-disturbing or alienating action BLM might perform or authorize, and includes among other things "any Federal, federally assisted or federally licensed action, activity, or program or the approval, sanction, assistance, or support of any non-Federal action, activity, or program. . . ." Furthermore, "license" does not have a particularly narrow meaning. In legal usage, it is a near synonym for permit or permission. In short, the word "license" is not a loophole in which to find exemption from section 106.

Discretion a key. Whether an action is an undertaking subject to section 106 depends in part on whether the agency official is free to exercise discretion. At the beginning of section 800.4 is the conditioning clause, "before an agency makes a final decision." "Decision" is defined at 800.2(h) as "the exercise of or the opportunity to exercise discretionary authority . . . at any stage of an undertaking where alterations might be made in the undertaking to modify its impact" There are a few rare circumstances, such as processing applications for locatable mineral patents or certain statutorily required land transfers in Alaska, where BLM performs a ministerial role, without discretion and without the opportunity to introduce alternatives, impose conditions, or reject the application. Upon determination that the legal criteria are met the right must be granted. If there is no discretion an essential condition of an undertaking is missing. However, in almost all cases other than those mentioned, some element of discretion is present.

Categorical exclusions. There is no direct correlation between categorical exclusions from environmental analysis (516 DM 6, App. 5) and determinations whether there is a need to conduct section 106 review. Different thresholds apply. Some actions excluded from environmental analysis may be found to constitute undertakings, and some non-undertakings may require environmental analysis. Several BLM States have developed a list of "section 106 categorical exclusions" in agreements executed with the SHPO.

Programmatic consultation. The high degree of structure in the section 800.4 consultation process is aimed principally at Federal agencies that assist or license major projects, but do not administer Federal lands and resources and do not have program and staff capabilities for managing cultural resources. The DOT Federal aid highway program and the HUD community development block grants program are examples. We clearly fit into the process differently. For day-to-day, minor, repetitive actions we have generally reached some kind of accommodation with the SHPO that tacitly excuses us from rigid application of the steps in section 800.4(a). For example, we might routinely examine range improvements in a set way, consulting with the SHPO only when we enter an "effect" situation. These loose agreements should be formalized so that we are not technically vulnerable to charges of noncompliance.

Landowner Consent. In cases where some or all of the land surface involved in an undertaking is non-Federal and the land owner refuses access for cultural resource survey, our responsibilities under section 106 and section 800.4 are not terminated. The procedures in the regulations still have to be followed. If we do not have direct knowledge of what is present, consultation with the SHPO in subsequent steps will have to be based on probabilities. If analogous survey data suggest that National Register properties are likely to be present, we may expect that further consultation will assume undefined adverse effects to unverified properties. This will complicate the consultation, involving the Advisory Council and adding time to the process. Consultation will probably conclude with a Memorandum of Agreement which accepts the assumed adverse effect (see 36 CFR 800.6(b) and (c)).

Risk. Failure to follow the section 800.4 procedures to conclusion exposes the agency official to court action. In ascending order of complexity and time required, "conclusion" may consist of (1) agreement with the SHPO on a "no effect" determination, (2) an Advisory Council concurrence on "no adverse effect," (3) a Memorandum of Agreement, (4) comments resulting from an Advisory Council panel hearing, or (5) comments resulting from a meeting of the full Advisory Council. Each of the last three requires follow-up reporting from the agency official on actions taken. The courts ordinarily concern themselves not with the quality of the agency decision, but only with determining whether the regulated procedures were followed.

The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under Title II of this Act a reasonable opportunity to comment with regard to such undertaking.

REVIEW OF INDIVIDUAL UNDERTAKINGS

§ 800.4 Federal Agency responsibilities.

As early as possible before an agency makes a final decision concerning an undertaking and in any event prior to taking any action that would foreclose alternatives or the Council's ability to comment, the Agency Official shall take the following steps to comply with the requirements of Section 106 of the National Historic Preservation Act and Section 2(b) of Executive Order 11593. It is the primary responsibility of each Agency Official requesting Council comments to conduct the appropriate studies and to provide the information necessary for an adequate review of the effect a proposed undertaking may have on a National Register or eligible property, as well as the information necessary for adequate consideration of modifications or alterations to the proposed undertaking that could avoid, mitigate, or minimize any adverse effects. It is the responsibility of each Agency Official requesting consultation with a State Historic Preservation Officer under this section to provide the information that is necessary to make an informed and reasonable evaluation of whether a property meets National Register criteria and to determine the effect of a proposed undertaking on a National Register or eligible property. Although a Federal agency may require non-Federal parties to undertake certain steps required by these regulations as a prerequisite to Federal action and may authorize non-Federal participation under this section and in the consultation process under § 800.6 pursuant to approved counterpart regulations, the ultimate responsibility for compliance with these regulations remains with the Federal agency and cannot be delegated by it.

(a) *Identification of National Register and Eligible Properties.* It is the responsibility of each Federal agency to identify or cause to be identified any National Register or eligible property that is located within the area of the undertaking's potential environmental impact and that may be affected by the undertaking.

(1) The Agency Official shall consult the State Historic Preservation Officer, the published lists of National Register and eligible properties, public records, and other individuals or organizations with historical and cultural expertise, as appropriate, to determine what historic and cultural properties are known to be within the area of the undertaking's potential environmental impact. The State Historic Preservation Officer should provide the Agency Official with any information available on known historic and cultural properties identified in the area (whether on the National Register or not), information on any previous surveys performed and an evaluation of their quality, a recommendation as to the need for a survey of historic and cultural properties, and recommendations as to the type of survey and/or survey methods should a survey be recommended, and recommendations on boundaries of such surveys.

(2) The Agency Official shall, after due consideration of the information obtained pursuant to § 800.4(a)(1), determine what further actions are necessary to discharge the agency's affirmative responsibilities to locate and identify eligible properties that are within the area of the undertaking's potential environmental impact and that may be affected by the undertaking. Such actions may include a professional cultural resource survey of the environmental impact area, or parts of the area, if the area has not previously been adequately surveyed. The recommendations of the State Historic Preservation Officer should be followed in this matter.

(3) The Agency Official, in consultation with the State Historic Preservation Officer, shall apply the National Register criteria to all properties that may possess any historical, architectural, archeological, or cultural value located within the area of the undertaking's potential environmental impact. If either the Agency Official or the State Historic Preservation Officer finds that a property meets the National Register Criteria or a question exists as to whether a property meets the Criteria, the Agency Official shall request a determination of eligibility from the Secretary of the Interior in accordance with 36 CFR Part 63

The opinion of the Secretary respecting the eligibility of a property shall be conclusive for the purposes of these regulations. If the Agency Official and the State Historic Preservation Officer agree that no identified property meets the Criteria, the Agency Official shall document this finding and, unless the Secretary has otherwise made a determination of eligibility under 36 CFR Part 63, may proceed with the undertaking.

(4) The Agency Official shall complete the preceding steps prior to requesting the Council's comments pursuant to § 800.4(b)-(d). The Agency Official may, however, initiate a request for the Council's comments simultaneously with a request for a determination of eligibility from the Secretary when the Agency Official and the State Historic Preservation Officer agree that a property meets the National Register Criteria. Before the Council completes action pursuant to § 800.6, the Secretary must find the property eligible for inclusion in the National Register.

(b) *Determination of Effect.* For each National Register or eligible property that is located within the area of the undertaking's potential environmental impact, the Agency Official, in consultation with the State Historic Preservation Officer, shall apply the Criteria of Effect, (§ 800.3(a)), to determine whether the undertaking will have an effect upon the historical, architectural, archeological, or cultural characteristics of the property that qualified it to meet National Register Criteria.

(1) *No Effect.* If the Agency Official, in consultation with the State Historic Preservation Officer, finds that the undertaking will not affect these characteristics, the undertaking may proceed. The Agency Official shall document each Determination of No Effect, which shall be available for public inspection. If the State Historic Preservation Officer objects or other timely objection is made to the Executive Director to an Agency Official's Determination of No Effect, the Executive Director may review the Determination and advise the Agency Official, the State Historic Preservation Officer and any objecting party of the findings within 15 days.

(2) *Effect determined.* If the Agency Official or the Executive Director finds that the undertaking will have an effect upon these characteristics, the Agency Official, in consultation with the State Historic Preservation Officer, shall apply the Criteria of Adverse Effect, set forth in § 800.3(b), to determine whether the effect of the undertaking may be adverse.

(c) *Determinations of no adverse effect.* If the Agency Official, in consultation with the State Historic Preservation Officer, finds the effect on the historical, architectural, archeological, or cultural characteristics of the property not to be adverse, the Agency Official shall forward adequate documentation (See § 800.13(a)) of the Determination, including written evidence of the views of the State Historic Preservation Officer, to the Executive Director for review in accordance with § 800.6. If the State Historic Preservation Officer fails to respond to an Agency Official's request as provided in § 800.5, the Agency Official shall include evidence of having contacted the State Historic Preservation Officer.

(d) *Adverse effect determination.* If the Agency Official finds the effect on the historical, architectural, archeological, or cultural characteristics of the property to be adverse, or if the Executive Director does not accept an Agency Official's Determination of No Adverse Effect pursuant to review under § 800.6, the Agency Official shall:

(1) Prepare and submit a Preliminary Case Report requesting the comments of the Council (See § 800.13(b)),

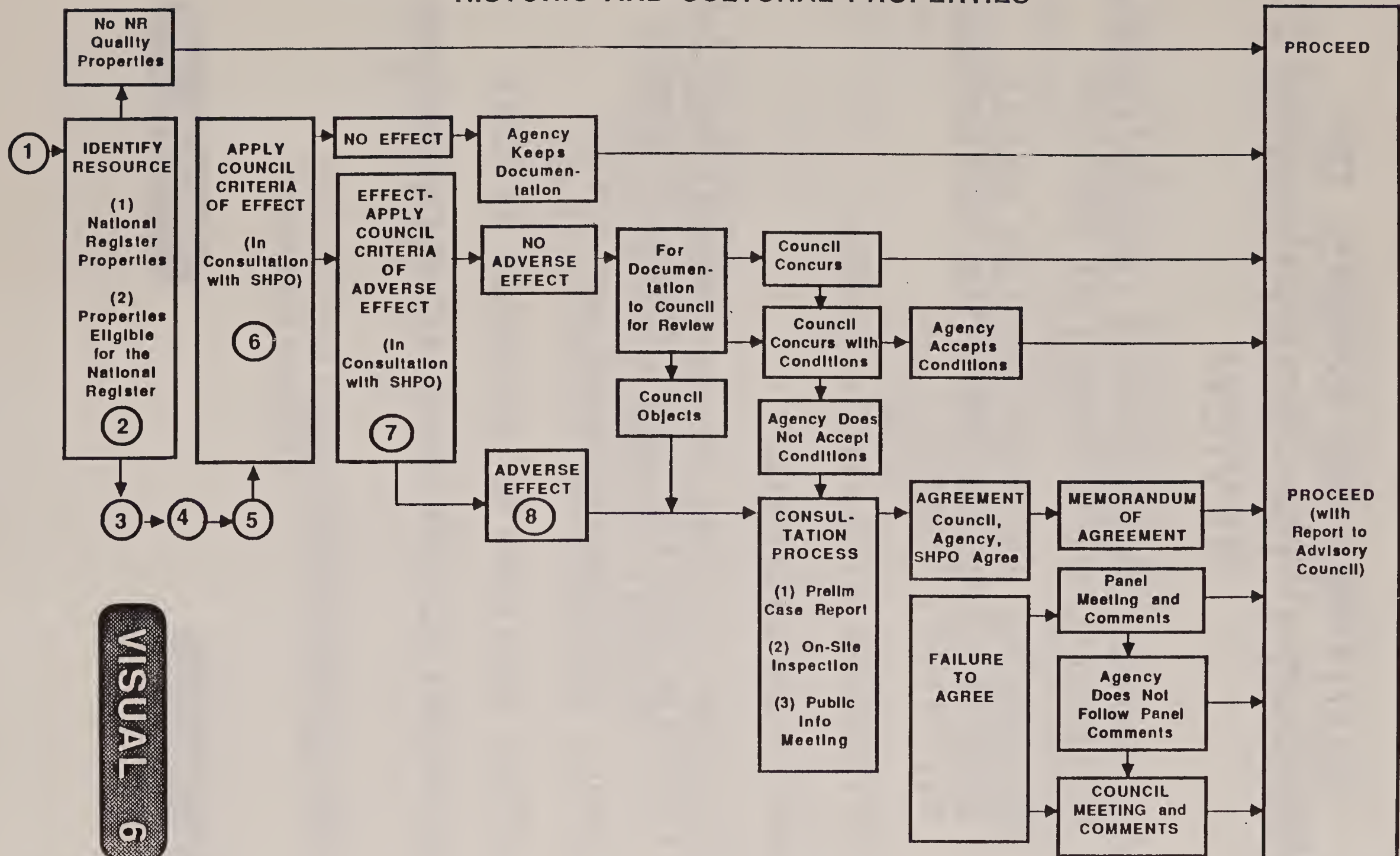
(2) Notify the State Historic Preservation Officer of this request, and

(3) Proceed with the consultation process set forth in § 800.6.

(e) *Suspense of action.* Until the Council issues its comments under these regulations, good faith consultation shall preclude a Federal agency from taking or sanctioning any action or making any irreversible or irretrievable commitment that could result in an adverse effect on a National Register or eligible property or that would foreclose the consideration of modifications or alternatives to the proposed undertaking that could avoid, mitigate, or minimize such adverse effects.

EDITORIAL NOTE: At 47 FR 24306, June 4, 1982 § 800.4(a)(4) was suspended until further notice, effective July 6, 1982.

ADVISORY COUNCIL REGULATIONS FOR PROTECTION OF HISTORIC AND CULTURAL PROPERTIES



2-23

VISUAL
6

EIGHT BASIC STEPS OF SECTION 106 COMPLIANCE REVIEW

- *1. DETERMINE "AREA OF THE UNDERTAKING'S
POTENTIAL ENVIRONMENTAL IMPACT"**
- *2. IDENTIFY NR PROPERTIES AND OBTAIN
SHPO'S RECOMMENDATIONS REGARDING
INVENTORY NEEDS**
- 3. DETERMINE INVENTORY NEEDS**
- *4. APPLY NR CRITERIA**
- 5. REQUEST ELIGIBILITY DETERMINATION IF
THE BLM AND THE SHPO CANNOT AGREE**
- *6. APPLY CRITERIA OF EFFECT**
- *7. APPLY CRITERIA OF ADVERSE EFFECT**
- 8. SUSPEND ACTION UNTIL ACHP COMMENTS**

*** IN CONSULTATION WITH SHPO**

VISUAL 7

SECTION 106 COMPLIANCE REVIEW ELEMENTS

CULTURAL PROPERTY:

OBJECT	LISTED	NAT'L REGISTER OF HISTORIC PLACES (NR)
STRUCTURE	ELIGIBLE	
SITE	POTENTIALLY ELIGIBLE	
DISTRICT		

LOCATION:

**"AREA OF THE UNDERTAKING'S
POTENTIAL ENVIRONMENTAL
IMPACT"**

TRIGGER:

**"...WHICH MAY BE AFFECTED BY THE
UNDERTAKING."**

VISUAL 8

SECTION 106 COMPLIANCE REVIEW SUMMARY

**IDENTIFY CR PROPERTIES (NR
OR NR QUALITY) WHICH MAY BE
AFFECTED BY THE UNDERTAKING**

**CONSULT WITH ACHP (SHPO)
ON THE UNDERTAKING'S
POTENTIAL EFFECTS ON
IDENTIFIED PROPERTIES**

**CONSIDER THESE CR'S IN
PLANNING AND IMPLEMENTING
THE UNDERTAKING**

VISUAL 9

CULTURAL RESOURCE CASE STUDIES---INSTRUCTIONS

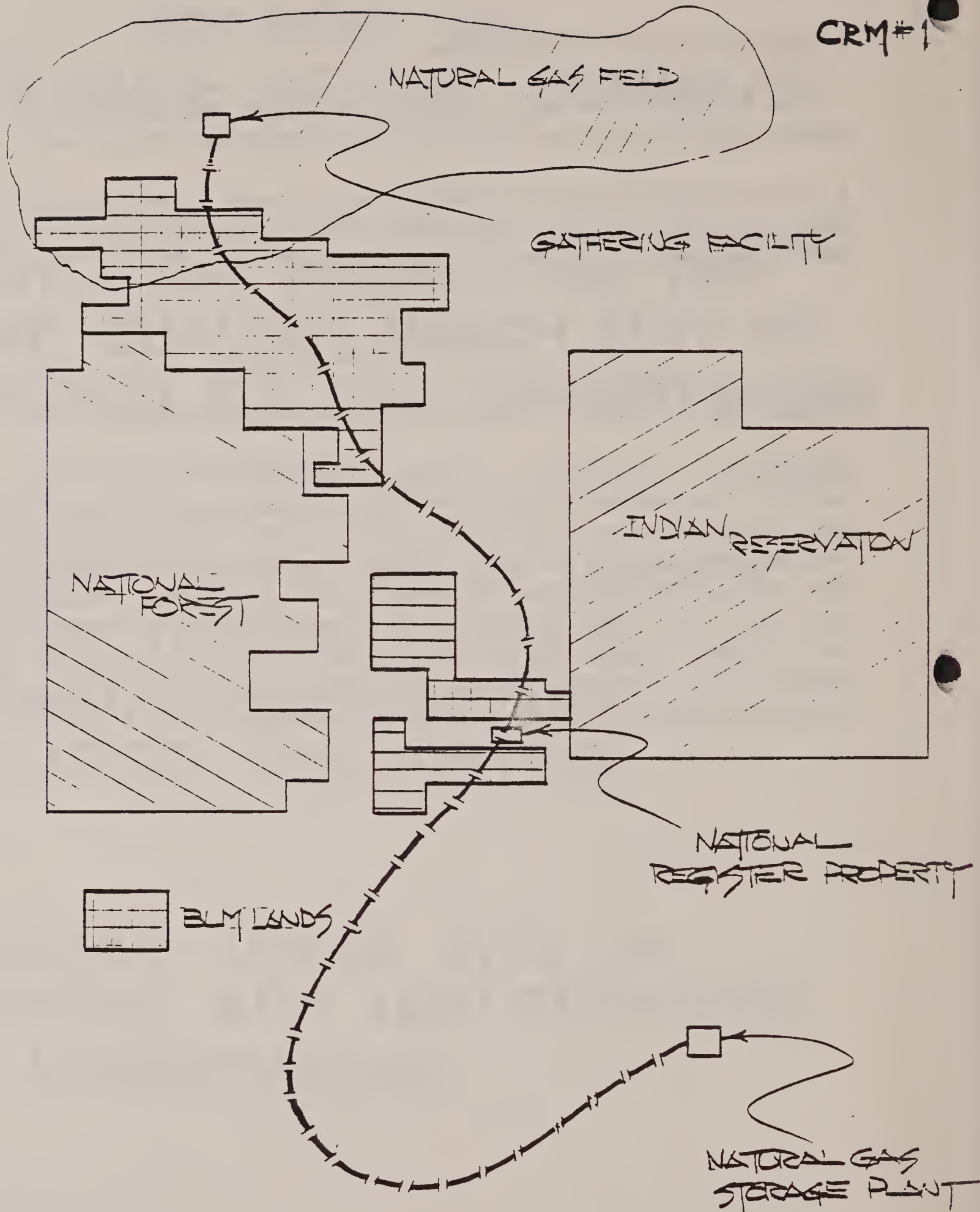
1. Review the attached case studies.
2. List the steps to be taken to ensure compliance with BLM's cultural resource directives and the persons, groups or agencies to be consulted and why.
3. Provide the recommendations you would make to management to ensure timely completion of the undertaking and efficient resolution of the cultural resource concerns.

CRM CASE STUDY #1

Bureau Action: Issuance of a right-of-way grant for a natural gas pipeline.

Undertaking: Construction of a natural gas pipeline from a gas field gathering facility to a natural gas storage plant 120 miles away within the same state. The proposed pipeline would cross 25 miles of public land administered by BLM, most situated near the gas field. Although little or no cultural resource inventory work has been completed on these public lands, most cultural resource inventories have been conducted in the area of the adjoining gas field. Also, the proposed pipeline right-of-way crosses through a regionally significant cultural resource property listed on the National Register of Historic Places but located on a section of private land between two blocks of public land.

CRM#1



CRM CASE STUDY #2

Bureau Action: Approval of an Application for Permit to Drill (APD) and issuance of related rights-of-way for an oil drilling operation.

Undertaking: Drilling an oil well with Federal Lease #4 and the construction of 2 1/2 miles of access road. A two acre drill pad with associated features (i.e., pit, temporary four-strand barbed wire fence and cattleguard) will need to be constructed. The access road is off Lease.

Variation 1. The entire undertaking is on federal surface with federal minerals.

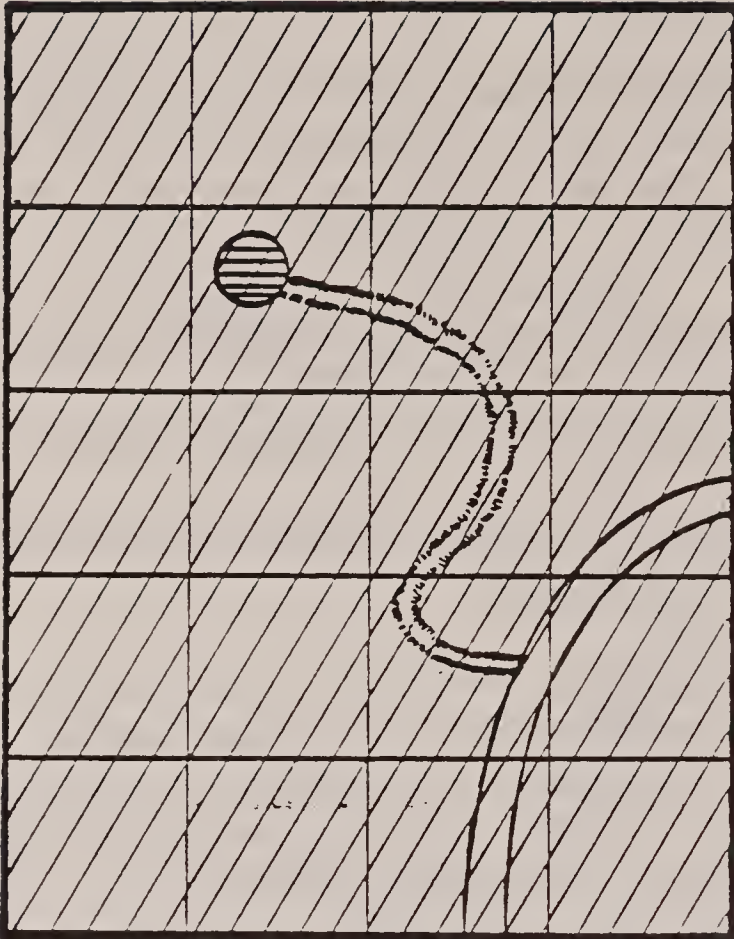
Variation 2. The entire undertaking is on private surface with federal minerals.

Variation 3. The drill pad site is on private surface with federal minerals and the 2 1/2 miles of access road is across federal surface.

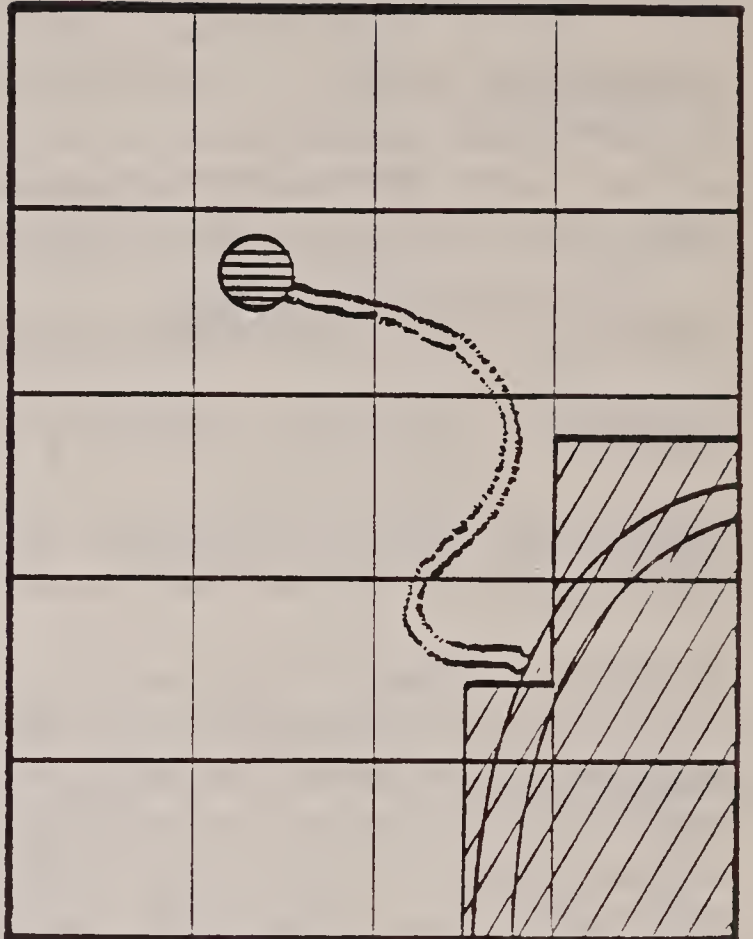
Variation 4. The drill pad site is on private surface with federal minerals and all but 1/4 mile of the needed 2 1/2 miles of access road is on private surface. In addition, the owner of the private land will not allow archaeologists to conduct inventories on his land even though the SHPO's records show that a major archaeological site that could be of National Register significance is located along the northern edge of the project area. Significant cultural resources could be affected by the proposed project.

CRM #2

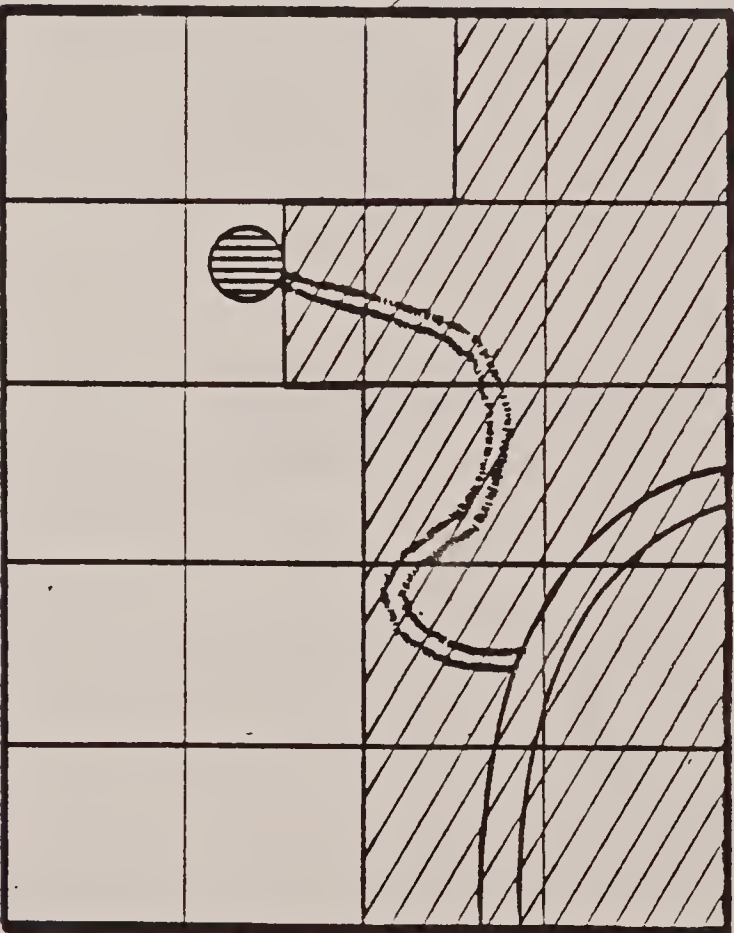
V1



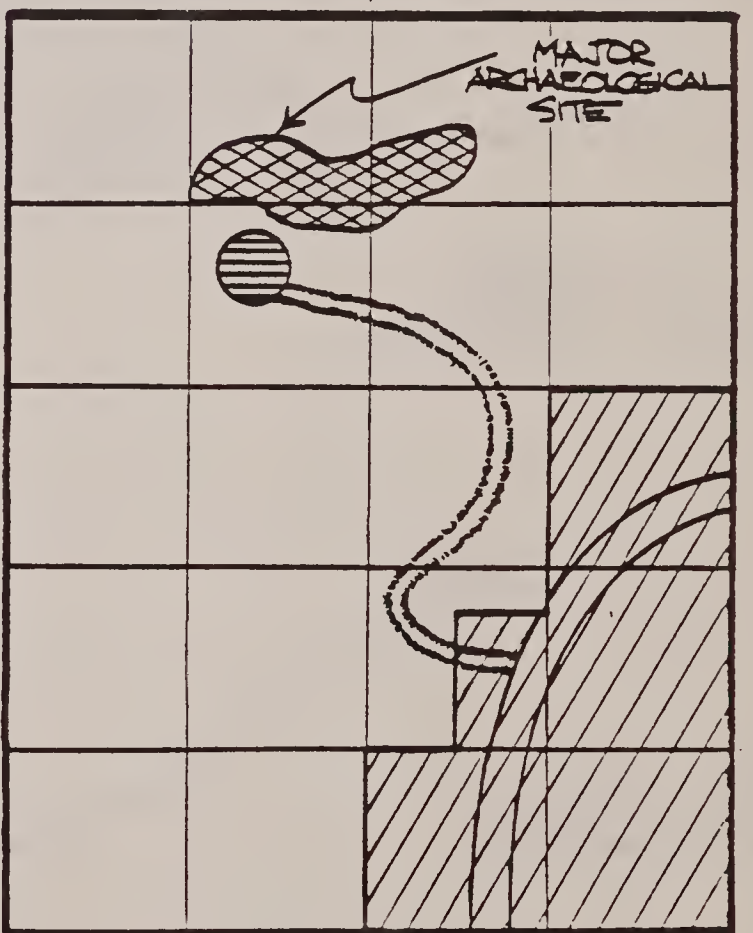
V2



V3



V4

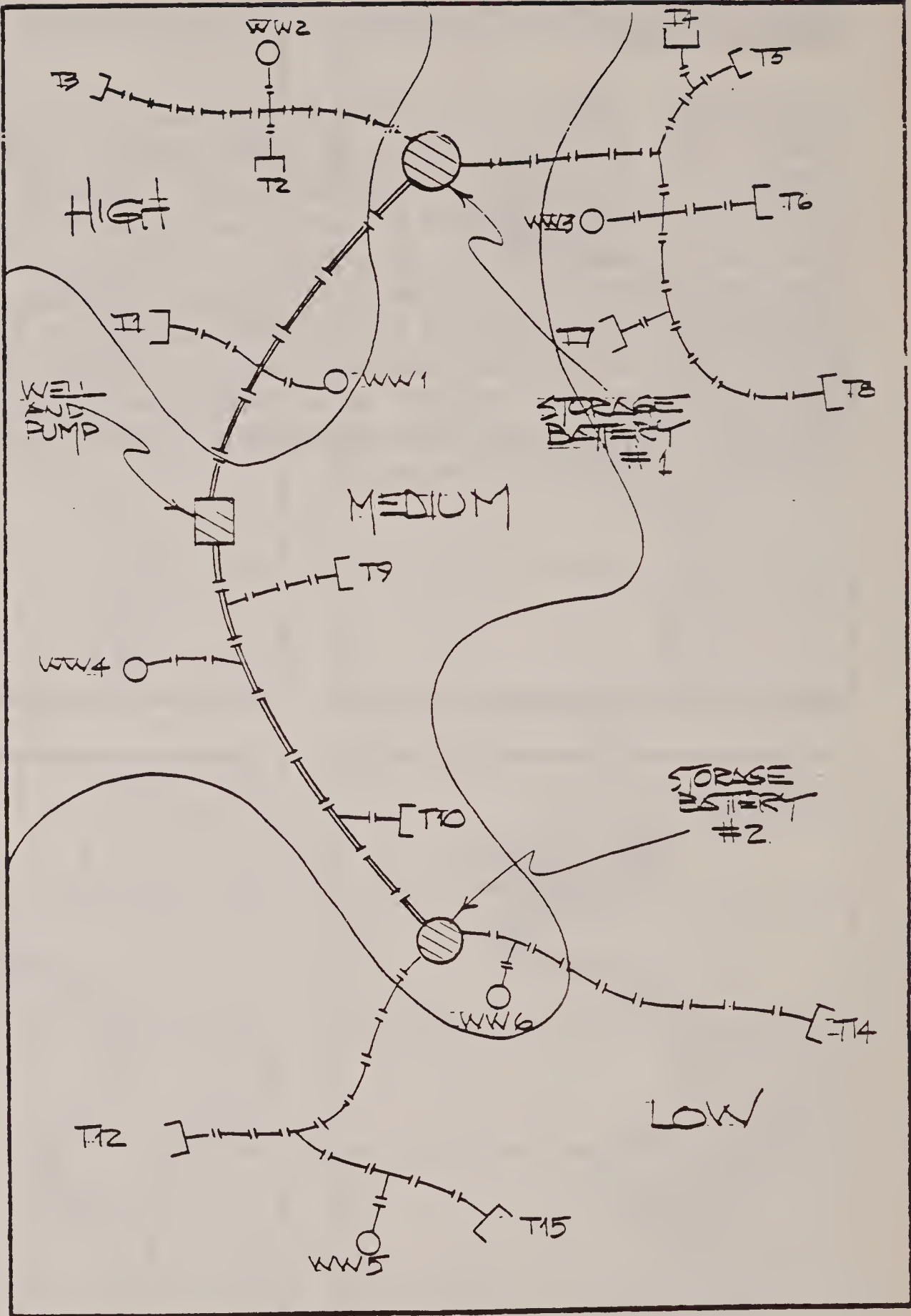


CRM CASE STUDY #3

Bureau Action: Issuance of a contract for the construction of a rangeland water pipeline by BLM.

Undertaking: Construction by BLM of 20 miles of a rangeland water pipeline system with 15 livestock tubs, six wildlife waters, and two water storage batteries. The entire project is on public lands. The area has been covered by a 10% cultural resource Class II inventory with portions of the proposed pipeline area having been covered by Class III inventories. Fifteen miles of the proposed pipeline have not been inventoried at the Class III level. About 40% of the project area is within a low probability rating for cultural resources, 35% within a medium probability rating and 25% within a high probability rating. The major known cultural resource areas have been avoided. A Request for Proposals (RFP) has just been issued and the BLM would like to issue the construction contract within two months.

CRM #3



INTRODUCTION TO CULTURAL RESOURCE MANAGEMENT

COURSE REVIEW

PART I - Complete the following statements:

- A. The basic objectives of BLM's Cultural Resource Management (CRM) Program are:
1. _____ and preserve representative samples.
 2. _____ in all land-use planning and management decisions.
 3. _____ for scientific and socio-cultural values.
 4. _____ inadvertent damage.

PART II - Answer the Following:

5. List six types of cultural resources (CRs).

(A) _____	(D) _____
(B) _____	(E) _____
(C) _____	(F) _____

PART III - Circle the Appropriate Letter:

- | | | |
|--|---|---|
| 6. Paleontological resources are considered to be cultural resources. | T | F |
| 7. The National Park Service (NPS) has full responsibility/authority for managing cultural resources on Bureau-administered lands. | T | F |
| 8. The Section 106 Compliance process identifies CR properties, consults with the SHPO, and considers CRs in planning and implementation of projects. | T | F |
| 9. There are five cultural resource inventory classes. | T | F |
| 10. The National Historic Preservation Act of 1966 expands the national Policy toward cultural resources to include those of state and local as well as national significance. | T | F |
| 11. The primary program of cultural resource work is funded by other subactivities. This work is done mostly to meet the BLM's CR compliance responsibilities related to various undertakings. | T | F |
| 12. Evaluation is the identification and recordation of CRs. | T | F |

13. Cultural resource management is the development and implementation of programs designed to inventory, evaluate, protect, preserve, and/or make beneficial use of cultural resources (including evidence of prehistoric, historic, and recent remains) and the natural resources that figured significantly in cultural systems. The objective of such programs is the conservation, preservation, and protection of cultural values through management, and the scientific study of these resources for the public good.

T F

PART IV - Match the description in Column 3 with the word in Column A by placing the correct letter from Column B in front of the word in Column A.

Column A

Column B

____ 14. Cultural Resources

A. Adherence to cultural resource laws, regulations, executive orders, and other mandates designed to protect cultural resources. Such actions would include 106 Compliance as required by the Historic Preservation Act of 1966.

____ 15. Avoidance

B. The partial or complete redesign or relocation of a project or action to eliminate the potential of impacts to a cultural resource.

____ 16. Prehistoric

C. Pertaining to that period of time before written history.

____ 17. Mitigation

D. Those fragile and nonrenewable remains of human activity, occupation, or endeavor, reflected in districts, sites, structures, buildings, objects, artifacts, ruins, works of art, architecture, and natural features, that were of importance in human events. These resources consist of (1) physical remains, (2) areas where significant human events occurred--even though evidence of the event no longer remains, and (3) the environment immediately surrounding the actual resources.

____ 18. Compliance

E. A sample-oriented field inventory designed to locate and record, from surface and exposed profile indications, all cultural resource sites within a portion of a defined area in a manner which will allow an objective estimate of the nature and distribution of cultural resources in the entire defined area.

____ 19. SHPO

F. The alleviation or lessening of possible adverse effects of an action upon a cultural resource by application of appropriate protection measures or adequate scientific study.

____ 20. CR Class II
(Sampling Field)
Inventory

G. The official within each state, authorized by the state at the request of the Secretary of Interior, to act as a liaison for purposes of implementing the National Historic Preservation Act of 1966.



UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

MANUAL TRANSMITTAL SHEET

Release

8-1

Date

3/6/78

Subject

8100 - CULTURAL RESOURCE MANAGEMENT

1. Explanation of Material Transmitted: This release establishes the basic objectives, authority, responsibility, definitions, and policy for the Bureau's cultural resource management program. Subsidiary Manual Sections will supplement the basic policy and provide procedures and guidance for inventory, evaluation, nomination, planning, protection, and utilization of cultural resources. The new 8100 series of the BLM Manual supersedes the Manual Section on management of antiquities.
2. Reports Required: None.
3. Materials Superseded: BLM Manual Section 6231 - MANAGEMENT OF ANTIQUITIES is superseded by this release and has been removed from the BLM Manual by separate transmittal sheet issued under that subject-function code.
4. Filing Instructions: After the attached sheets have been filed as directed, this transmittal sheet may be discarded.

REMOVE:

None

INSERT:

8100

(Total: 26 sheets)

George C. Thwait
Associate Director

ADDED:

RELEASE 8-11

1/10/80



8100 - CULTURAL RESOURCE MANAGEMENT

Table of Contents

- .01 Purpose
- .02 Objectives
- .03 Authority
- .04 Responsibility
- .05 Definitions
- .06 Policy
- .07 Responsibility for Non-Federal Cultural Resources
- .08 Program Relationships

Glossary of TermsAppendices

1. An Act for the Preservation of American Antiquities
2. Uniform Rules and Regulations (Under the Antiquities Act of 1906)
3. Historic Sites Act of 1935
4. Reservoir Salvage Act of 1960 as Amended in 1974
5. Historic Preservation Act of 1966 as Amended in 1976
6. Executive Order 11593

8100 - CULTURAL RESOURCE MANAGEMENT

.01 Purpose. This Manual Section provides the basic guides and information for the cultural resource management program as expanded upon in the various subsidiary Manual Sections in this series.

.02 Objectives. The cultural resource program is designed to inventory, evaluate, plan, and manage cultural resources on lands administered by the Bureau and in areas of Bureau responsibility. The objectives of the program are to:

A. Protect and preserve representative samples of the full array of cultural resources for the benefit of scientific and socio-cultural use by present and future generations.

B. Ensure that cultural resources are given full consideration in all land-use planning and management decisions.

C. Manage cultural resources so that scientific and socio-cultural values are not diminished, but rather maintained and enhanced.

D. Ensure that the Bureau's undertakings avoid inadvertent damage to cultural resources, both Federal and non-Federal.

.03 Authority.

A. Antiquities Act of 1906 (P.L. 59-209; 34 Stat. 225; 16 U.S.C. 432, 433) is the basic legislation for the preservation and protection of antiquities on all Federal land. It provides penalties for those who excavate or appropriate the values without Secretarial permit; provides for the establishment by Presidential proclamation of national monuments from the public lands; and provides for permits for investigation of cultural and scientific resources to be issued to public, scientific, and educational institutions. (See Appendix 1.)

B. Uniform Rules and Regulations (43 CFR Part 3 and DM Part 310.7.6) have been issued by the Secretaries of the Interior, Agriculture, and War (now Defense) to carry out the provisions of the Antiquities Act. (See Appendix 2.)

C. Recreation and Public Purposes Act of June 14, 1926 (P.L. 69-386; 44 Stat. 741; 43 U.S.C. 869), as amended, authorizes the lease or sale of lands for recreational and public purposes, including historic sites under certain conditions. (See 43 CFR 2740.)

D. Historic Sites Act of 1935 (P.L. 74-292; 49 Stat. 666; 16 U.S.C. 461 et seq) declares it a national policy to identify and preserve for public use historic sites, buildings, objects, and antiquities of national significance for the inspiration and benefit of the people. (See Appendix 3.)

8100 - CULTURAL RESOURCE MANAGEMENT

E. Outer Continental Shelf Act of 1953 (P.L. 83-212; 67 Stat. 462; 43 U.S.C. 1331) provides that "The Constitution and laws and civil and political jurisdiction of the United States are hereby extended to the subsoil and seabed of the Outer Continental Shelf.....to the same extent as if the Outer Continental Shelf were an area of exclusive Federal jurisdiction located within a state." It allows for non-conflicting State laws to be applied on the OCS.

F. Reservoir Salvage Act of 1960 (P.L. 86-523; 74 Stat. 220, 221; 16 U.S.C. 469), as amended by the Archeological and Historic Preservation Act of 1974 (P.L. 93-291; 88 Stat. 174; 16 U.S.C. 469), provides for the preservation of historical and archeological data which might otherwise be lost as the result of Federally funded construction projects. Any reservoir of over 5,000 acre feet or 40 surface acres must be reported to the Secretary of the Interior so that arrangements can be made to survey the reservoir for archeological and historical values and salvage those present. The amendment extends the Act to include any Federal construction project or Federally licensed or assisted activity or program affecting cultural resources. The Act further provides that up to one percent of funds from the program or construction project affecting cultural resources may be spent to recover, preserve, and protect the cultural resource data. (See Appendix 4.)

G. National Historic Preservation Act of October 15, 1966 (P.L. 89-665; 80 Stat. 915; 16 U.S.C. 470), as amended (P.L. 94-422; 90 Stat. 1313; and P.L. 94-458; 90 Stat. 1939), expands the national policy toward cultural resources to include those of State and local as well as national significance. These resources should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people. It also establishes the National Register of Historic Places, the Advisory Council on Historic Preservation, State Historic Preservation Officers, and a matching grants-in-aid program for the National Trust. Section 106 directs all Federal agencies to take into account the effects of their actions on properties included in or eligible for inclusion in the National Register and affords opportunities for the Advisory Council on Historic Preservation to comment on the proposed actions and their effects. The Act has also been amended to provide for the withholding from disclosure to the public of information relating to the location of sites or objects listed on the National Register if the disclosure of specific information would create a risk of destruction or harm to such sites or objects. (See Appendix 5.)

H. National Environmental Policy Act of 1969 (P.L. 91-190; 83 Stat. 852; 42 U.S.C. 4321) establishes national policy for protection and enhancement of the environment. Part of the function of the Federal Government in protecting the environment is to "preserve important historic, cultural, and natural aspects of our national heritage."

8100 - CULTURAL RESOURCE MANAGEMENT

I. Council on Environmental Quality Guidelines (40 CFR Part 1500) provides directions for compliance with the National Environmental Policy Act and directs Federal agencies to comply with consultation and compliance requirements of the National Historic Preservation Act of 1966. Combining these requirements with those of the National Environmental Policy Act presents a single document "which meets all applicable requirements."

J. Marine Protection, Research, and Sanctuaries Act of 1974 (P.L. 92-532; 86 Stat. 1052) provides for the establishment of Marine Sanctuaries by the Secretary of Commerce, "after consultation with the Secretaries of State, Defense, the Interior, and Transportation, the Administrator (of Environmental Protection Agency), and the heads of other interested Federal agencies, and with the approval of the President, . . . those areas of the ocean waters, as far seaward as the outer edge of the Continental Shelf, . . . of other coastal waters . . . which he determines necessary for the purpose of preserving or restoring such areas for their conservation, recreational, ecological or aesthetic values." The historic Civil War shipwreck Monitor was placed in such a sanctuary.

K. Executive Order 11593 ("Protection and Enhancement of the Cultural Environment", 36 F.R. 8921, May 13, 1971) directs all Federal agencies to inventory their cultural resources, to submit to the National Register of Historic Places all qualified sites meeting the criteria, and to protect all nominated sites. It also directs the Federal agencies to use due caution with all cultural resources until the inventory, evaluation, and nomination processes are completed. A leadership posture for the Federal Government in cultural resource protection is made policy in this order. (See Appendix 6.)

L. Procedures of the Advisory Council on Historic Preservation (36 CFR Part 800) establishes procedures for compliance with Section 106 of the National Historic Preservation Act of 1966, and Section 1 (3) and 2(b) of Executive Order 11593.

M. The Department of Transportation Act of 1966 (P.L. 89-670; 80 Stat. 931; 49 U.S.C. 1653) declares it to be national policy that a "special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites." It requires planning to minimize harm to historic sites where there are no feasible and prudent alternatives to transportation plans.

N. Submerged Lands Act of 1953 (P.L. 82-3167; 67 Stat. 29; 43 U.S.C. 1301-1315) provides for resource management on the seabed of the Continental Shelf seaward of State boundaries.

8100 - CULTURAL RESOURCE MANAGEMENT

O. Mineral Leasing Act of 1920 (P.L. 66-146; 41 Stat. 437), as amended and supplemented (30 U.S.C. 181 et seq), provides for the disposition, through permitting and leasing, of minerals on public lands (including coal, oil, oil shale, gas, phosphate, sodium, and potassium) for purposes of mineral exploration and extraction. The Secretary of the Interior is authorized to condition mineral permits and leases to ensure the protection of environmental and other land use values, including cultural resources. In addition, the permittee or lessee may be required to bear the expense of compliance with stipulations.

P. Geothermal Steam Act of 1970 (P.L. 91-581; 84 Stat. 1566; 30 U.S.C. 1001-1025) authorizes the Secretary of the Interior to issue leases for development and utilization of geothermal resources and by-products in lands administered by him, in national forests or other lands administered by the Department of Agriculture through the Forest Service, and in conveyed lands to which the United States has reserved the right to geothermal steam and associated resources. Regulations implementing the Act include the protection of environmental qualities and surface use and resources. Lessees are required to comply with lease terms and stipulations related to discovered, known, or suspected archeological, paleontological, or historic sites (43 CFR 3204.1).

Q. Coastal Zone Management Act of 1972 (P.L. 92-582; 86 Stat. 1280), as amended in 1976 (P.L. 94-370; 90 Stat. 1013), establishes the national policy for management, beneficial use, protection, and development of the land and water resources of the Nation's coastal zones. It ensures that Federal programs are consistent with State plans.

R. National Park System Mining Activity Regulations Act of 1976 (P.L. 94-429; 90 Stat. 1342; 16 U.S.C. 1902 et seq) provides that whenever the Secretary of the Interior finds or is notified by an appropriate scientific, historical, or archeological authority that a property found to be nationally significant in illustrating the history of the United States and designated as a natural or historical landmark may be irreparably lost or destroyed by surface mining activities, he shall notify the person conducting the activity and submit a report to the Advisory Council on Historic Preservation, with a request for alternative measures to mitigate or abate the activity. The Act also authorizes the Council to report to Congress on actual or potential effects of surface mining activities on those properties and include recommendations for legislation to protect the properties.

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S. Federal Land Policy and Management Act of 1976 (P.L. 94-579; 90 Stat. 2743; 43 U.S.C. 1701) directs the Bureau of Land Management to manage public lands on the basis of multiple use, and in a manner that will ".....protect the quality of scientific,historical,environmental.....resources, and archeological values," and that, where appropriate, will preserve and protect certain public lands in their natural condition. The Act authorizes the disposition, exchange, and acquisition of land; requires the inventory of public land; provides for long-range, comprehensive resource planning; authorizes the Secretary of the Interior to make rules and regulations pertaining to the public lands; and provides for the enforcement of public land laws and regulations.

.04 Responsibility.

A. Director, through the Assistant Director, Resources, and the Chief, Division of Recreation, is responsible for:

1. Overall direction, leadership, and coordination for implementation and evaluation of the Bureau's cultural resource management program.
2. Cultural resource guidance, information, strategies, procedures, and directives as required by other divisions and Bureau offices. This is accomplished in coordination with the related Washington Office Division(s).
3. Coordination of contacts with other Federal bureaus, agencies, and Departmental offices in Washington regarding cultural resource concerns in coordination with the related Washington Office Division(s).

B. Service Center Director is responsible for:

1. Developing technical guidance for the review and approval of the Director (370).
2. Providing technical training at the State and District levels upon request and as directed by the Director (370).
3. Monitoring systems implementation and identifying needs for systems improvement.
4. Participating in technical evaluations and implementation relative to the cultural resource management program.

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C. State Directors, within their respective jurisdictions, are responsible for:

1. Directing implementation of the cultural resource management program.
2. Identifying priorities for implementation of the program components.
3. Providing statewide training on program components.
4. Providing technical direction for implementation of the program components.
5. Monitoring the progress and quality of work being completed at the field level.

D. District Managers and Managers, OCS Offices, are responsible for directing the implementation and maintenance of the cultural resource management program within their respective areas of authority.

E. All Personnel are responsible for complying with the Antiquities Act and related cultural mandates. Cultural resource specialists have a lead responsibility in ensuring that cultural resource compliance is carried out. All personnel are responsible for: reporting cultural resources, when found; avoiding inadvertent destruction of these resources; and reporting violations of the Antiquities Act and regulations protecting cultural resources to appropriate officials.

.05 Definitions. (See Glossary of Terms.)

.06 Policy. It is Bureau policy that:

A. The Bureau, in both its upland and marine management programs, protects and manages the cultural resources under its jurisdiction or control, and avoids inadvertent loss or destruction of cultural resources.

B. Cultural resources are recognized as fragile, nonrenewable resources with scientific and socio-cultural values, representing an important and integral part of our Nation's heritage. Being responsible for the largest remaining cultural resource base on Federal lands, the Bureau develops and maintains the capability needed to manage these resources.

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.07 Responsibility for Non-Federal Cultural Resources.

A. The Bureau assures that its actions or authorizations take into consideration their effects on cultural resources located on non-Federal land.

B. The Bureau undertakes, or has undertaken, the inventory and evaluation of cultural resources on all non-Federal lands within the area of potential environmental impact by a Bureau project or Bureau-authorized action. The level of inventory required depends upon the type of action being considered and the nature of the cultural resource involved.

C. The Bureau mitigates, or has mitigated, direct effects upon non-Federal cultural resources caused by Bureau projects or Bureau-authorized actions. The degree of mitigation implemented depends upon the impact and the scientific and socio-cultural values of the resource involved.

D. Cultural resource materials (e.g., artifacts) recovered from non-Federal land remain the property of the landowner. Data acquired in the form of studies, notes, or analyses are always the property of the United States when the cultural resource work is funded by the Federal Government.

E. Inventory and/or mitigation can be undertaken as a stipulation of a lease, permit, or license whenever the specific approval authority allows.

.08 Program Relationships.A. Relationship to Bureau Programs.1. Bureau Planning System.

a. Subject to existing law, the protection, management, use, and development of cultural resources on the public lands shall be guided by and in accordance with approved Bureau land-use plans (e.g., Management Framework Plans (MFP's)).

b. Along with the other public land resources, cultural resources are considered in the Bureau planning system as follows:

(1) Preplanning analysis requires consideration of cultural resources as a value addressed in scoping out and making preparation to support the development of a MFP, including inventory needs, assignment of responsibility for cultural resource inputs, and schedules (see BLM Manual Section 1601).

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(2) Assessment and description of the present cultural resource situation and evaluation of management opportunities is part of the Unit Resource Analysis (see BLM Manual Section 1605).

(3) Objects, structures, places, or other cultural resources valued by people in a social or economic sense are analyzed in the Planning Area Analysis (see BLM Manual Section 1607).

(4) Cultural resource program objectives and recommendations are developed and considered along with other resources in formulation of a MFP (see BLM Manual Section 1608).

c. A MFP that meets established quality standards must, except under unusual circumstances, be available as input to preparation of a cultural resource activity plan (see BLM Manual Section 1609).

2. Recreation Management Program.

a. Recreation use of cultural resource properties for public education/interpretation purposes is managed through the Bureau's Recreation Management program in coordination with the cultural resource program.

b. When cultural resources are used for recreation purposes, such recreational use must be managed to meet the cultural resource protection objective as stated in the approved MFP.

c. Reconstruction, restoration, and replication of cultural resources are undertaken by the Bureau to meet recreation management program objectives. Consequently, these activities are not undertaken as a part of the cultural resource management program.

d. Interpretation of cultural resources for public education and enhancement is a recreation program function. The cultural resource program does limited interpretation, but only as a part of its protection objective.

e. The cultural resource management program provides to the recreation program:

(1) Cultural resource inventory and evaluation data that can be analyzed from a recreation opportunity standpoint;

(2) Cultural resource management expertise which the recreation program can use for interpretation, reconstruction, restoration, or other recreation functions.

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3. Other Resource Programs.

a. Compliance Requirements. Legislative mandates require that all Bureau resource programs undertake certain cultural resource inventory, evaluation, compliance, and mitigation work for any of their actions that might affect cultural resources. Procedures developed by the cultural resource program are utilized by other resource programs to do this work. All Bureau programs, as benefiting activities, are responsible for funding:

(1) Cultural resource inventories and evaluations needed to ensure compliance, beyond that data provided by the cultural resource program through the URA;

(2) Compliance documentation for section 106 of the National Historic Preservation Act of 1966 (NHPA);

(3) Cultural resource protection work needed to mitigate effects of their projects upon cultural resources.

b. Paleontological Resources. Although protected by the Antiquities Act, paleontological resources are not, in general, considered to be cultural resources. Consequently, management of paleontological resources is not a function of the cultural resource management program.

B. Relationship to Other Federal Programs.

1. National Park Service. The National Park Service (NPS) has no responsibility or authority for managing cultural resources on Bureau-administered lands. The Bureau maintains full management responsibility for cultural resources on lands under its administration. However, consultation, joint projects, or technical assistance may be negotiated with the NPS in cases where they promote the effectiveness or efficiency of Bureau program execution.

2. Heritage Conservation and Recreation Service. The Heritage Conservation and Recreation Service (HCRS) coordinates the National Heritage Program.

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a. National Register and Landmarks. The HCRS maintains the National Register of Historic Places and the National Historic Landmarks programs. The Bureau prepares National Register nominations or eligibility determinations and submits them to the HCRS. The HCRS does not manage Bureau-administered National Register properties and National Historic Landmarks; full management responsibility is with the BLM.

b. Antiquities Permits. The Bureau and the HCRS have a complementary role in the issuance of antiquities permits. The HCRS, as the representative of the Secretary of the Interior, receives and distributes applications to concerned Federal land-managing agencies for review and concurrence. Based on the concurrence of the Federal land-managing agency, the HCRS issues permits for cultural resource investigations to qualified institutions. The Bureau, as a Federal land-managing agency, has responsibility for analyzing, field checking, and processing permit applications for actions on Bureau-administered lands. The Bureau also has the responsibility for field compliance checks once a permit has been issued to ensure that the permittee meets the requirements of permit stipulations.

c. Project Mitigation. The HCRS has been delegated by the Secretary of the Interior the responsibility for coordination of activities as set forth in the Archeological and Historic Preservation Act of 1974, and for preparation of the Secretary's report to Congress on the scope and effectiveness of the program. However, the Bureau is responsible for undertaking, or having undertaken, the recovery of scientific, prehistoric, historic, and archeological data that may be lost as a result of Bureau or Bureau-approved actions.

d. Protection Consultation and Technical Information. Executive Order 11593 authorizes the Secretary of the Interior, through the HCRS, to advise Federal agencies in the identification and evaluation of cultural resources, and to develop and disseminate information concerning methods and techniques of protection, restoration, and maintenance of cultural resource properties. The Bureau must, however, identify, evaluate, and protect cultural resources on lands under its administration. Where appropriate, the Bureau can consult with the HCRS on inventory, protection, restoration, and maintenance methods and techniques. However, acceptance and implementation of HCRS recommendations are at the discretion of the Bureau.

C. Relationship to State and Local Programs.

1. State Historic Preservation Officer (SHPO).

a. The functions of the SHPO in relation to the Bureau are:

(1) To develop a comprehensive State historic preservation plan;

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(2) To maintain and update a continuing statewide inventory of cultural resources.

b. The Bureau has the responsibility to coordinate its cultural resource program with the SHPO, who in turn:

(1) Reviews and comments on all National Register nominations prepared by the Bureau;

(2) Reviews and comments in regard to section 106 (NHPA) compliance requirements;

(3) Provides the Bureau an opportunity to comment upon National Register nominations prepared by the SHPO for properties on Bureau-administered lands.

c. The SHPO does not perform inventories or manage cultural resource properties on Bureau-administered lands.

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Glossary of Terms

- A -

aboriginal Americans: the original (indigenous) inhabitants of the United States and their descendants (Indians and Eskimos).

adverse effect: the effect of any action or undertaking which may damage or result in the deterioration of a cultural resource site, district, object, building, structure, or its setting and/or environment (see 36 CFR 800.9).

Advisory Council on Historic Preservation: a council established pursuant to Title II of the National Historic Preservation Act of 1966 (NHPA), consisting of 29 members: 12 members appointed by the President, 14 agency heads, and two representatives from private interests. Under the provisions of Section 106 of NHPA, the Advisory Council must be afforded an opportunity to comment on Federal, Federally assisted, or Federally licensed undertakings which may affect properties listed in or eligible for listing in the National Register of Historic Places. In addition, the Advisory Council provides advice to the President and the Congress on national preservation policy.

American Indians: the indigenous (aboriginal) peoples of the United States, excepting those indigenous peoples referred to as Eskimos.

antiquities: those prehistoric and historic artifacts, objects, structures, buildings, ruins, sites, and monuments of socio-cultural or scientific values which meet the general criterion of being more than 50 years old.

archeological resources: all prehistoric and historic physical evidence of past human activity, other than historical documents, which can be used to reconstruct lifeways and culture history of past peoples. These include sites, artifacts, environmental data, and all other relevant information and the contexts in which they occur.

archeology: the scientific discipline responsible for recovering, analyzing, interpreting, and explaining the unwritten portion of man's historic and prehistoric past.

architectural values: structures and buildings that contribute to the history of architecture, the architectural history of an area or region, or that are representative of the architectural heritage of the Nation, State, or locality.

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artifact: any object made, modified, or used by man, usually movable.

avoidance: the partial or complete redesign or relocation of a project or action to eliminate the potential of impact to a cultural resource. If avoidance can not be ensured, then appropriate mitigation must be undertaken. (See mitigation.)

-B-

building: a structure created to shelter any form of human activity, such as a house, barn, church, hotel, or similar structure. Building may refer to an historically related complex such as a courthouse and jail or a house and barn.

-C-

Classes of Inventory: (See Cultural Resource Inventory Classes.)

clearance: a statement by the District Manager or other appropriate official, based upon an inventory, that a given tract of land contains no cultural resource values or, if cultural resources are present, that compliance actions will be undertaken and other adverse impacts on them sufficiently mitigated.

compliance: adherence to cultural resource laws; regulations, executive orders, and other mandates designed to protect cultural resources. Such actions would include Section 106 compliance as required by the Historic Preservation Act of 1966.

conservation: the managed and controlled use of cultural resources to conserve and protect their values for future generations.

cultural resources: those fragile and nonrenewable remains of human activity, occupation, or endeavor, reflected in districts, sites, structures, buildings, objects, artifacts, ruins, works of art, architecture, and natural features, that were of importance in human events. These resources consist of (1) physical remains, (2) areas where significant human events occurred--even though evidence of the event no longer remains, and (3) the environment immediately surrounding the actual resource. Cultural resources, including both prehistoric and historic remains, represent a part of the continuum of events from the earliest evidences of man to the present day.

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Cultural Resource Inventory Classes:

Class I - existing data inventory: an inventory study of a defined area designed (1) to provide a narrative overview (cultural resource overview) derived from existing cultural resource information, and (2) to provide a compilation of existing cultural resource site record data on which to base the development of the BLM's site record system.

Class II - sampling field inventory: a sample-oriented field inventory designed to locate and record, from surface and exposed profile indications, all cultural resource sites within a portion of a defined area in a manner which will allow an objective estimate of the nature and distribution of cultural resources in the entire defined area.

The Class II inventory is a tool to be utilized in management and planning activities as an accurate predictor of cultural resources in the area of consideration. The primary area of consideration for the implementation of a Class II inventory is a planning unit. The secondary area is a specific project in which an intensive field inventory (Class III) is not practical or not necessary.

Class III - intensive field inventory: an intensive field inventory designed to locate and record, from surface and exposed profile indications, all cultural resource sites within a specified area.

Upon completion of such inventories in an area, no further cultural resource inventory work normally is needed. A Class III inventory is appropriate on small project areas, all areas to be disturbed, and primary cultural resource areas.

cultural resource data: cultural resource information embodied in material remains and manifested in studies, notes, records, diaries, analyses, and published and unpublished manuscripts.

cultural resource management: the development and implementation of programs designed to inventory, evaluate, protect, preserve, and/or make beneficial use of cultural resources (including evidence of prehistoric, historic, and recent remains) and the natural resources that figured significantly in cultural systems. The objective of such programs is the conservation, preservation, and protection of cultural values through management, and the scientific study of these resources for the public good.

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cultural resource material: actual cultural resource objects and remains contained in or removed from a cultural resource property, including, but not limited to, artifacts, by-products of human activity such as flakes of stone, fragments of bone, and organic waste of various kinds, architectural elements, soil samples, pollen samples, carbon samples, human skeletal material, and works of art.

cultural resource overview: a professionally researched and written narrative of the prehistoric and historic human use and occupation of an area from the earliest times to the present, usually prepared on a Districtwide basis. Activities and events discussed in the narrative are related as closely as possible to the known or suspected cultural resources present in the District. The narrative provides a yardstick against which resource significance can be measured, a guide to assist in assessing cultural resource property interpretation, and a chronological and topical description and interpretation of the prehistory and history of the District or area. The cultural resource overview provides a framework to assist in assessing cultural resource sites and locality significance and interpretation; provides a context in which to determine the relationship and differences between the various cultural resources within the defined areas; and serves as one of the major sources of background data for cultural resource sections of EAR/ES's, URA/MFP's, and other BLM project documents.

cultural resource professional: an individual who, by training and experience, is competent to assess and evaluate cultural resources; usually a recognized archeologist, historian, historical architect, or anthropologist. Such an individual must be employed or approved by the Bureau of Land Management.

cultural resource property: any cultural, archeological, historical, and architectural site, building, structure, district, or object.

cultural resource values: values attributed to cultural resources which are either of scientific or socio-cultural concern.

culture: man's use of and adaptation to the environment as seen through his behavior, activities, and the methods employed to transmit customs, knowledge, and ideas to succeeding generations. Culture can be broken down into four major subsystems--economic, social, political, and ideological.

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curatorial capability: the capability of an institution or organization to store and maintain cultural resource collections. This calls for, among other things, sufficient staff and facilities to prepare, record, preserve, and safely store physical remains, and to produce necessary associated documentation of recovered/acquired cultural data and material.

-D-

data: (See cultural resource data.)

district: a geographically definable area, urban or rural, possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects which are united by past events or aesthetically by plan or physical development. A district may also be comprised of individual elements which are separated geographically but are linked by association or history, such as the mileage markers on the Boston Post Road and the discontinual remaining visible trail ruts of the Oregon Trail.

-E-

effect: any action or undertaking which causes or may cause any change, beneficial or adverse, to the existing character of a cultural resource property. (Also see 36 CFR 800.8.)

emergency protection: immediate measures, taken outside of the planning process, to prevent further or irrevocable deterioration of cultural resource properties. An emergency exists only if time does not allow for proper planning and/or budgeting.

emergency stabilization: immediate stabilization measures taken outside the planning process. These measures are usually performed on structures, buildings, or sites in order to provide interim stabilization to cultural resource properties in imminent danger.

ethnography: the branch of anthropology that deals descriptively with specific cultures, such as those of the American Indian.

ethnohistory: ethnographic information that can be obtained from historical documents, i.e., diaries of early explorers, early newspaper accounts, etc.

ethnology: the branch of anthropology that deals with the comparative cultures of various peoples, including their distributions, characteristics, folkways, religions, and organization.

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evaluation: an analysis of cultural resource site records to provide specific recommendations for the scientific and socio-cultural use of cultural resources in support of the planning system and interim management. Evaluation is the next step after inventory and may require surface collecting, testing, excavation, and/or any other research or investigative technique which will facilitate the objective.

excavation: the scientifically controlled recovery of sub-surface materials and information from a cultural resource site. Recovery techniques are relevant to research problems and are designed to produce maximum knowledge about the utilization of the site, its relation to other sites and the natural environment, and its significance in the maintenance of the cultural system.

-G-

ground-truthing: field inspection of a reported cultural resource property merely to confirm its recorded location, description, and/or condition.

-H-

historical archeology: investigation of historic sites through archeological techniques; study of the material culture of people living during recorded history in order to understand cultural history and human behavior.

historic preservation: a general term covering the protection, rehabilitation, restoration, and reconstruction of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, or culture. (cf. Historic Preservation Act of 1966; P.L. 89-665.)

historic resources: all evidences of human activity that date from historic (i.e., recorded history) periods. These resources include documentary data (i.e., written records, archival material, photographs, maps, etc.), sites, artifacts, environmental data, and all other relevant information. Also included are locations where documented historical events took place, even though no physical evidence of the events remain other than the setting. Historic resources are cultural resources and may be considered archeological resources when archeological work is involved in their identification and interpretation.

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- I -

inventory: a descriptive listing and documentation, including photographs and maps, of cultural resources; included are the processes of locating, identifying, and recording sites, structures, buildings, objects, and districts through library and archival research, information from persons knowledgeable about cultural resources, and varying levels of intensity of on-the-ground field surveys. (See cultural resource inventory classes.)

- J -

judgmental reconnaissance: a cursory field examination or reexamination, on a non-systematic basis, of select areas or cultural resource properties.

- M -

mitigation: the alleviation or lessening of possible adverse effects of an action upon a cultural resource by application of appropriate protection measures or adequate scientific study.

- N -

National Register of Historic Places: the official list, established by the Historic Preservation Act of 1966, of the Nation's cultural resources worthy of preservation. The Register lists archeological, historic, and architectural properties (i.e., districts, sites, buildings, structures, and objects) nominated for their local, State, or national significance by State and/or Federal agencies and approved by the National Register staff. The Register is maintained by the Heritage Conservation and Recreation Service.

national register quality: those cultural resource properties which meet the National Register criteria and have been determined eligible for nomination to the National Register of Historic Places by virtue of their local, State, or national significance.

native Americans: commonly refers to American Indians and Eskimos, but can apply as well to post-Columbian, introduced peoples. Also see "Aboriginal Americans" and "American Indian."

- O -

objects: man-made or man-modified items of a portable, semi-portable, or movable nature and of functional, scientific, aesthetic, cultural, or historical value, such as gold dredges, freight wagons, boats or ships, metates, flags, etc. Artifacts are kinds of objects.

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object of antiquity: an object which meets the requirement of being 50 years or more in age.

Outer Continental Shelf (OCS): all submerged lands lying seaward and outside of the area of lands beneath navigable waters, as defined by the Submerged Lands Act (43 U.S.C. 1301-1315). In most States, it is those submerged lands extending seaward from a line 3 geographic miles distant from the coastline of each State.

- P -

prehistoric: pertaining to that period of time before written history. In North America, "prehistoric" usually refers to the pre-Columbian period.

preservation: the long-term protection of a cultural resource in its existing condition, form, and extent. Preservation of cultural resource data and material may be accomplished through scientific excavation, analysis, and/or curation.

probability sampling: a sampling scheme designed to provide an unbiased selection of sample units or of the population being sampled. (Probability sampling entails the use of both probability and sampling theory, as opposed to the use of a non-probabilistic sampling approach.) Probability sampling allows the unbiased laws of chance, rather than the biased selection of the individual, to determine which sample is selected for investigation. It allows each sampling unit an equal chance of being chosen. In this context, the term "probability sampling" is synonymous with the archeologist's use of the term "random sampling."

project: an identifiable action, either Bureau or non-Bureau initiated, which may affect cultural resources.

protection measures: administrative or physical measures undertaken to retain a cultural resource in a condition determined by a management decision. The nature of protection is based upon the scientific and/or socio-cultural value of the resource and the degree to which the resource is threatened.

protohistory: the study of people who were living after history began, but who themselves did not maintain written records or have writing.

purposive sample: the purposeful, non-random or non-probability selection of a sampling unit for investigation.

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-Q-

qualified professional: an individual, organization, or institution possessing capability through education, training, and experience in the areas of anthropology-archeology, history, architecture, or historical or underwater archeology to retain professional certification by virtue of education or expertise, facilities, and experience. Such an individual or entity would be suitable for doing contract work with the Bureau. On-the-ground surveys and all types of archeological investigations can only be supervised by persons, organizations, and institutions whose training and experience enable them to obtain a Federal Antiquities Permit. (See also cultural resource professional.)

-R-

reconstruction: to rebuild a structure using the best evidence available, including archeological and historical research, to restore its original appearance or its appearance at an earlier period determined by management.

relocation: the act of moving a cultural resource, usually a building or structure, intact from its original or present location to a new location.

rehabilitation: repairing or remodeling a property to maintain or achieve a predetermined level of cultural resource integrity.

replication: copy or reproduction of a cultural resource property.

restoration: the process of accurately reestablishing the form and details of a property or portion of a property, together with its setting, as it appeared in a particular period of time. This may involve removal of later work that is not in itself significant and replacement of missing original work.

-S-

salvage: the recovery of material and data from an affected cultural resource, prior to its alteration or destruction, through recordation, documentation, partial or total excavation, and collection for analysis and interpretation.

scientific value: the importance attributed to a cultural resource by scientists and historians because of the information it contains, which will contribute to the understanding of human behavior.

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significance: the relative importance of a cultural resource determined by its socio-cultural and/or scientific value.

site: a physical location of past human activities or events. Cultural resource sites are extremely variable in size and range from the location of a single cultural resource object to a cluster of cultural resource structures with associated objects and features. A site may consist of secondarily deposited cultural resource remains.

socio-cultural resource: places, objects, structures, and things of importance to a subgroup or the population at large. Included are values that reflect the concepts, religion, social heritage, habits, skills, arts, and lifestyles of a given people.

socio-cultural value: the importance attributed to an object (including flora and fauna), structure, place, living thing, lifestyle, or belief by a group based on the group's perception of the object's role in maintaining their heritage or their existence as a group. Usually expressed in qualitative rather than quantitative terms.

stabilization: protective techniques usually applied to structures and ruins to keep them in their existing condition, prevent further deterioration, and provide structural safety without significant rebuilding. Capping mud-mortared masonry walls with concrete mortar is an example of a stabilization technique.

State Historic Preservation Officer (SHPO): the official within each State, authorized by the State at the request of the Secretary of the Interior, to act as a liaison for purposes of implementing the National Historic Preservation Act of 1966.

structure: a work constructed by man and composed of interdependent and interrelated parts exhibiting a discernible pattern of organization. It is implicit in an engineering enterprise but extends itself to water towers, Indian mounds, bridges, canal locks, ruins, ditches, embankments, etc.

surface collection: removal of cultural resource materials and remains from the surface of a cultural resource property.

surface disturbing activity: an activity which alters the physical, chemical, hydrological, biological, morphological, etc., structure or character of the ground surface or features thereon.

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-T-

test excavation: the recovery of data and material through controlled and limited excavation of a portion of a cultural resource property using a sampling design to acquire critical evaluation data.

treasure or treasure trove: gold or silver in coin, plate, or bullion; loose gem stones and other valuable property, including, but not limited to, vases, cups, ornaments, rings, jewelry, or other articles of art having historical value and interest, but whose primary value is usually monetary.

-U-

undertaking: any action, activity, or program, or the approval, sanction, assistance, or support of any action, activity, or program by a Federal agency. (See also 36 CFR 800.3.)

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An Act for the Preservation of American Antiquities

[PUBLIC—No. 209.]

An Act For the preservation of American antiquities.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person who shall appropriate, excavate, injure, or destroy any historic or prehistoric ruin or monument, or any object of antiquity, situated on lands owned or controlled by the Government of the United States, without the permission of the Secretary of the Department of the Government having jurisdiction over the lands on which said antiquities are situated, shall upon conviction, be fined in a sum of not more than five hundred dollars or be imprisoned for a period of not more than ninety days, or shall suffer both fine and imprisonment, in the discretion of the court.

SEC. 2. That the President of the United States is hereby authorized, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and may reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected: *Provided*, That when such objects are situated upon a tract covered by a bona fide unperfected claim or held in private ownership, the tract, or so much thereof as may be necessary for the proper care and management of the object, may be relinquished to the Government, and the Secretary of the Interior is hereby authorized to accept the relinquishment of such tracts in behalf of the Government of the United States.

SEC. 3. That permits for the examination of ruins, the excavation of archaeological sites, and the gathering of objects of antiquity upon the lands under their respective jurisdictions may be granted by the Secretaries of the Interior, Agriculture, and War to institutions which they may deem properly qualified to conduct such examination, excavation, or gathering, subject to such rules and regulations as they may prescribe: *Provided*, That the examinations, excavations, and gatherings are undertaken for the benefit of reputable museums, universities, colleges, or other recognized scientific or educational institutions, with a view to increasing the knowledge of such objects, and that the gatherings shall be made for permanent preservation in public museums.

SEC. 4. That the Secretaries of the Departments aforesaid shall make and publish from time to time uniform rules and regulations for the purpose of carrying out the provisions of this Act.

Approved, June 8, 1906 (34 Stat. L. 225).

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Uniform Rules and Regulations (Under The Antiquities Act of 1906)

UNIFORM RULES AND REGULATIONS

**PRESCRIBED BY THE SECRETARIES OF THE INTERIOR, AGRICULTURE, AND WAR
TO CARRY OUT THE PROVISIONS OF THE "ACT FOR THE PRESER-
VATION OF AMERICAN ANTIQUITIES," APPROVED JUNE
8, 1906 (34 STAT. L., 225).**

1. Jurisdiction over ruins, archeological sites, historic and pre-historic monuments and structures, objects of antiquity, historic landmarks, and other objects of historic or scientific interest, shall be exercised under the act by the respective Departments as follows:

By the Secretary of Agriculture over lands within the exterior limits of forest reserves, by the Secretary of War over lands within the exterior limits of military reservations, by the Secretary of the Interior over all other lands owned or controlled by the Government of the United States, provided the Secretaries of War and Agriculture may by agreement cooperate with the Secretary of the Interior in the supervision of such monuments and objects covered by the act of June 8, 1906, as may be located on lands near or adjacent to forest reserves and military reservations, respectively.

2. No permit for the removal of any ancient monument or structure which can be permanently preserved under the control of the United States *in situ*, and remain an object of interest, shall be granted.

3. Permits for the examination of ruins, the excavation of archeological sites, and the gathering of objects of antiquity will be granted, by the respective Secretaries having jurisdiction, to reputable museums, universities, colleges, or other recognized scientific or educational institutions, or to their duly authorized agents.

4. No exclusive permits shall be granted for a larger area than the applicant can reasonably be expected to explore fully and systematically within the time limit named in the permit.

5. Each application for a permit should be filed with the Secretary having jurisdiction, and must be accompanied by a definite outline of the proposed work, indicating the name of the institution making the request, the date proposed for beginning the field work, the length of time proposed to be devoted to it, and the person who will have immediate charge of the work. The application must also contain an exact statement of the character of the work, whether examination, excavation, or gathering, and the public museum in which the collections made under the permit are to be permanently preserved. The application must be accompanied by a sketch plan or

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description of the particular site or area to be examined, excavated, or searched, so definite that it can be located on the map with reasonable accuracy.

6. No permit will be granted for a period of more than three years, but if the work has been diligently prosecuted under the permit, the time may be extended for proper cause upon application.

7. Failure to begin work under a permit within six months after it is granted, or failure to diligently prosecute such work after it has been begun, shall make the permit void without any order or proceeding by the Secretary having jurisdiction.

8. Applications for permits shall be referred to the Smithsonian Institution for recommendation.

9. Every permit shall be in writing and copies shall be transmitted to the Smithsonian Institution and the field officer in charge of the land involved. The permittee will be furnished with a copy of these rules and regulations.

10. At the close of each season's field work the permittee shall report in duplicate to the Smithsonian Institution, in such form as its secretary may prescribe, and shall prepare in duplicate a catalogue of the collections and of the photographs made during the season, indicating therein such material, if any, as may be available for exchange.

11. Institutions and persons receiving permits for excavation shall, after the completion of the work, restore the lands upon which they have worked to their customary condition, to the satisfaction of the field officer in charge.

12. All permits shall be terminable at the discretion of the Secretary having jurisdiction.

13. The field officer in charge of land owned or controlled by the Government of the United States shall, from time to time, inquire and report as to the existence, on or near such lands, of ruins and archeological sites, historic or prehistoric ruins or monuments, objects of antiquity, historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest.

14. The field officer in charge may at all times examine the permit of any person or institution claiming privileges granted in accordance with the act and these rules and regulations, and may fully examine all work done under such permit.

15. All persons duly authorized by the Secretaries of Agriculture, War, and Interior may apprehend or cause to be arrested, as provided in the act of February 6, 1905 (33 Stat. L., 700), any person or persons who appropriate, excavate, injure, or destroy any historic or prehistoric ruin or monument, or any object of antiquity on lands under the supervision of the Secretaries of Agriculture, War, and Interior, respectively.

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16. Any object of antiquity taken, or collection made, on lands owned or controlled by the United States, without a permit, as prescribed by the act and these rules and regulations, or there taken or made, contrary to the terms of the permit, or contrary to the act and these rules and regulations, may be seized wherever found and at any time, by the proper field officer or by any person duly authorized by the Secretary having jurisdiction, and disposed of as the Secretary shall determine, by deposit in the proper national depository or otherwise.

17. Every collection made under the authority of the act and of these rules and regulations shall be preserved in the public museum designated in the permit and shall be accessible to the public. No such collection shall be removed from such public museum without the written authority of the Secretary of the Smithsonian Institution, and then only to another public museum, where it shall be accessible to the public; and when any public museum, which is a depository of any collection made under the provisions of the act and these rules and regulations, shall cease to exist, every such collection in such public museum shall thereupon revert to the national collections and be placed in the proper national depository.

WASHINGTON, D. C., December 28, 1906.

The foregoing rules and regulations are hereby approved in triplicate and, under authority conferred by law on the Secretaries of the Interior, Agriculture, and War, are hereby made and established, to take effect immediately.

E. A. Hitchcock

Secretary of the Interior.

James Wilson

Secretary of Agriculture.

Wm. A. Taft

Secretary of War.

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Historic Sites Act of 1935

[PUBLIC—No. 292—74TH CONGRESS]

[S. 2073]

AN ACT

To provide for the preservation of historic American sites, buildings, objects, and antiquities of national significance, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it is hereby declared that it is a national policy to preserve for public use historic sites, buildings and objects of national significance for the inspiration and benefit of the people of the United States.

SEC. 2. The Secretary of the Interior (hereinafter referred to as the Secretary), through the National Park Service, for the purpose of effectuating the policy expressed in section 1 hereof, shall have the following powers and perform the following duties and functions:

(a) Secure, collate, and preserve drawings, plans, photographs, and other data of historic and archaeologic sites, buildings, and objects.

(b) Make a survey of historic and archaeologic sites, buildings, and objects for the purpose of determining which possess exceptional value as commemorating or illustrating the history of the United States.

(c) Make necessary investigations and researches in the United States relating to particular sites, buildings, or objects to obtain true and accurate historical and archaeological facts and information concerning the same.

(d) For the purposes of this Act, acquire in the name of the United States by gift, purchase, or otherwise any property, personal or real, or any interest or estate therein, title to any real property to be satisfactory to the Secretary: *Provided*, That no such property which is owned by any religious or educational institution, or which is owned or administered for the benefit of the public shall be so acquired without the consent of the owner: *Provided further*, That no such property shall be acquired or contract or agreement for the acquisition thereof made which will obligate the general fund of the Treasury for the payment of such property, unless or until Congress has appropriated money which is available for that purpose.

(e) Contract and make cooperative agreements with States, municipal subdivisions, corporations, associations, or individuals, with proper bond where deemed advisable, to protect, preserve, maintain, or operate any historic or archaeologic building, site, object, or property used in connection therewith for public use, regardless as to whether the title thereto is in the United States: *Provided*, That no contract or cooperative agreement shall be made or entered into which will obligate the general fund of the Treasury unless or until Congress has appropriated money for such purpose.

(f) Restore, reconstruct, rehabilitate, preserve, and maintain historic or prehistoric sites, buildings, objects, and properties of national historical or archaeological significance and where deemed desirable establish and maintain museums in connection therewith.

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(Pgs. 321)

(g) Erect and maintain tablets to mark or commemorate historic or prehistoric places and events of national historical or archaeological significance.

(h) Operate and manage historic and archaeologic sites, buildings, and properties acquired under the provisions of this Act together with lands and subordinate buildings for the benefit of the public, such authority to include the power to charge reasonable visitation fees and grant concessions, leases, or permits for the use of land, building space, roads, or trails when necessary or desirable either to accommodate the public or to facilitate administration: *Provided*, That such concessions, leases, or permits, shall be let at competitive bidding, to the person making the highest and best bid.

(i) When the Secretary determines that it would be administratively burdensome to restore, reconstruct, operate, or maintain any particular historic or archaeologic site, building, or property donated to the United States through the National Park Service, he may cause the same to be done by organizing a corporation for that purpose under the laws of the District of Columbia or any State.

(j) Develop an educational program and service for the purpose of making available to the public facts and information pertaining to American historic and archaeologic sites, buildings, and properties of national significance. Reasonable charges may be made for the dissemination of any such facts or information.

(k) Perform any and all acts, and make such rules and regulations not inconsistent with this Act as may be necessary and proper to carry out the provisions thereof. Any person violating any of the rules and regulations authorized by this Act shall be punished by a fine of not more than \$500 and be adjudged to pay all cost of the proceedings.

SEC. 3. A general advisory board to be known as the "Advisory Board on National Parks, Historic Sites, Buildings, and Monuments" is hereby established, to be composed of not to exceed eleven persons, citizens of the United States, to include representatives competent in the fields of history, archaeology, architecture, and human geography, who shall be appointed by the Secretary and serve at his pleasure. The members of such board shall receive no salary but may be paid expenses incidental to travel when engaged in discharging their duties as such members.

It shall be the duty of such board to advise on any matters relating to national parks and to the administration of this Act submitted to it for consideration by the Secretary. It may also recommend policies to the Secretary from time to time pertaining to national parks and to the restoration, reconstruction, conservation, and general administration of historic and archaeologic sites, buildings, and properties.

SEC. 4. The Secretary, in administering this Act, is authorized to cooperate with and may seek and accept the assistance of any Federal, State, or municipal department or agency, or any educational or scientific institution, or any patriotic association, or any individual.

(b) When deemed necessary, technical advisory committees may be established to act in an advisory capacity in connection with the restoration or reconstruction of any historic or prehistoric building or structure.

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(Pub. 772)

(c) Such professional and technical assistance may be employed without regard to the civil-service laws, and such service may be established as may be required to accomplish the purposes of this Act and for which money may be appropriated by Congress or made available by gifts for such purpose.

SEC. 5. Nothing in this Act shall be held to deprive any State, or political subdivision thereof, of its civil and criminal jurisdiction in and over lands acquired by the United States under this Act.

SEC. 6. There is authorized to be appropriated for carrying out the purposes of this Act such sums as the Congress may from time to time determine.

SEC. 7. The provisions of this Act shall control if any of them are in conflict with any other Act or Acts relating to the same subject matter.

Approved, August 21, 1935.

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Reservoir Salvage Act of 1960 as Amended in 1974

Public Law 86-523, June 27, 1960, as amended by P.L. 93-291, Archeological and Historic Preservation Act, May 24, 1974.

AN ACT

To provide for the preservation of historic and archeological data (including relics and specimens) which might otherwise be lost as the result of the construction of a dam or any Federal construction project or Federally licensed or assisted activity or program.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it is the purpose of this Act to further the policy set forth in the Act entitled "An Act to provide for the preservation of historic American sites, buildings, objects, and antiquities of national significance, and for other purposes" approved August 21, 1935 (16 U.S.C. 461-467) by specifically providing for the preservation of historical and archeological data (including relics and specimens) which might otherwise be irreparably lost or destroyed as the result of (1) flooding, the building of access roads, the erection of workmen's communities, the relocation of railroads and highways, and other alterations of the terrain caused by the construction of a dam by any agency of the United States, or by any private person or corporation holding a license issued by any such agency or (2) any alteration of the terrain caused as a result of any Federal construction project or Federally licensed activity or program.

Section 2. Before any agency of the United States shall undertake the construction of a dam, or issue a license to any private individual or corporation for the construction of a dam, it shall give written notice to the Secretary of the Interior, (hereafter referred to as the Secretary), setting forth the site of the proposed dam and the approximate area to be flooded and otherwise changed if such construction is undertaken: *Provided*, That with respect to any floodwater retarding dam which provides less than five thousand acre-feet of detention capacity and with respect to any other type of dam which creates a reservoir of less than forty-surface acres the provisions of this section shall apply only when the constructing agency, in its preliminary surveys, finds, or is presented with evidence that historical or archeological materials exist or may be present in the proposed reservoir area.

Section 3. (a) Whenever any Federal agency finds, or is notified in writing, by an appropriate historical or archeological authority, that its activities in connection with any Federal construction project or Federally licensed project, activity, or program may cause irreparable loss or destruction of significant scientific, prehistorical, historical, or archeological data, such agency shall notify the Secretary, in writing, and shall provide the Secretary with appropriate information concerning the project, program, or activity. Such agency may

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request the Secretary to undertake the recovery, protection, and preservation of such data (including preliminary survey, or other investigation as needed, and analysis and publication of the reports resulting from such investigation), or it may, with funds appropriated for such project, program, or activity, undertake such activities. Copies of reports of any investigations made pursuant to this section shall be submitted to the Secretary, who shall make them available to the public for inspection and review.

(b) Whenever any Federal agency provides financial assistance by loan, grant, or otherwise to any private person, association, or public entity, the Secretary, if he determines that significant scientific, prehistorical, historical, or archeological data might be irrevocably lost or destroyed, may with funds appropriated expressly for this purpose conduct, with the consent of all persons, associations, or public entities having a legal interest in the property involved, a survey of the affected site and undertake the recovery, protection, and preservation of such data (including analysis and publication). The Secretary shall, unless otherwise mutually agreed to in writing, compensate any person, association, or public entity damaged as a result of delays in construction or as a result of the temporary loss of the use of private or any nonfederally owned lands.

Section 4. (a) The Secretary, upon notification, in writing, by any Federal or State agency or appropriate historical or archeological authority that scientific, prehistorical, historical, or archeological data is being or may be irrevocably lost or destroyed by any Federal or Federally assisted or licensed project, activity, or program shall, if he determines that such data is significant and is being or may be irrevocably lost or destroyed and after reasonable notice to the agency responsible for funding or licensing such project, activity, or program conduct or cause to be conducted a survey and other investigation of the areas which are or may be affected and recover and preserve such data (including analysis and publication) which, in his opinion, are not being, but should be, recovered and preserved in the public interest.

(b) No survey or recovery work shall be required pursuant to the section which, in the determination of the head of the responsible agency, would impede Federal or Federally assisted or licensed projects or activities undertaken in connection with any emergency, including projects or activities undertaken in anticipation of, or as a result of a natural disaster.

(c) The Secretary shall indicate the survey or recovery effort within sixty days after notification to him pursuant to subsection (a) of this section or within such time as may be agreed upon with the head of the agency responsible for funding or licensing the project, activity, or program in all other cases.

(d) The Secretary shall, unless otherwise mutually agreed to in writing, compensate any person, association, or public entity damaged

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as a result of delays in construction or as a result of the temporary loss of the use of private or nonfederally owned land.

Section 5. (a) The Secretary shall keep the agency responsible for funding or licensing the project notified at all times of the progress of any survey made under this Act, or of any work undertaken as a result of such survey, in order that there will be as little disruption or delay as possible in the carrying out of the functions of such agency and the survey and recovery programs shall terminate at a time mutually agreed upon by the Secretary and the head of such agency unless extended by mutual agreement.

(b) The Secretary shall consult with any interested Federal and State agencies, educational and scientific organizations, and private institutions and qualified individuals, with a view to determining the ownership of and the most appropriate repository for any relics and specimens recovered as a result of any work performed as provided for in this section.

(c) The Secretary shall coordinate all Federal survey and recovery activities authorized under this Act and shall submit an annual report at the end of each fiscal year to the Interior and Insular Affairs Committees of the United States Congress indicating the scope and effectiveness of the program, the specific projects surveyed and the results produced, and the costs incurred by the Federal Government as a result thereof.

Section 6. In the administration of this Act, the Secretary may (1) enter into contracts or make cooperative agreements with any Federal or State agency, any educational or scientific organization, or any institution, corporation, association, or qualified individual; and

(2) obtain the services of experts and consultants or organizations thereof in accordance with section 3109 of title 5, United States Code; and

(3) accept and utilize funds made available for salvage archeological purposes by any private person or corporation or transferred to him by any Federal agency.

Section 7. (a) To carry out the purpose of this Act, any Federal agency responsible for a construction project may assist the Secretary and/or it may transfer to him such funds as may be agreed upon, but not more than 1 per centum of the total amount authorized to be appropriated for such project, except that the 1 per centum limitation of this section shall not apply in the event that the project involves \$50,000 or less: *Provided*, That the costs of such survey, recovery, analysis, and publication shall be considered nonreimbursable project costs.

(b) For the purpose of subsection 3(b), there are authorized to be appropriated such sums as may be necessary, but not more than \$500,000 in fiscal year 1974; \$1,000,000 in fiscal year 1975; \$1,500,000 in fiscal year 1976; \$1,500,000 in fiscal year 1977; and \$1,500,000 in fiscal year 1978.

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(c) For purposes of subsection 4(a), there are authorized to be appropriated not more than \$2,000,000 in fiscal year 1974; \$2,000,000 in fiscal year 1975; \$3,000,000 in fiscal year 1976; \$3,000,000 in fiscal year 1977; and \$3,000,000 in fiscal year 1978.

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Historic Preservation Act of 1966 as Amended in 1976

Public Law 89-665, October 15, 1966, as amended by P.L. 94-422, to establish the National Historic Preservation Fund and for other purposes, September 28, 1976, and P.L. 94-458, for improvement in the administration of the National Park System, October 7, 1976.

AN ACT

To establish a program for the preservation of additional historic properties through the Nation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

The Congress finds and declares--

- (a) that the spirit and direction of the Nation are founded upon and reflected in its historic past;
- (b) that the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people;
- (c) that, in the face of ever-increasing extensions of urban centers, highways, and residential, commercial, and industrial developments, the present governmental and nongovernmental historic preservation programs and activities are inadequate to insure future generations a genuine opportunity to appreciate and enjoy the rich heritage of our Nation; and
- (d) that, although the major burdens of historic preservation have been borne and major efforts initiated by private agencies and individuals, and both should continue to play a vital role, it is nevertheless necessary and appropriate for the Federal Government to give maximum encouragement to agencies and individuals undertaking preservation by private means, and to assist State and local governments and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities.

TITLE I

Sec. 101. (a) The Secretary of the Interior is authorized--

- (1) to expand and maintain a national register of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, and culture, hereinafter referred to as the National Register, and to grant funds to States for the purpose of preparing comprehensive statewide historic surveys and plans in accordance with criteria established by the Secretary for the preservation, acquisition, and development of such properties;

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(2) to establish a program of matching grants-in-aid to States for projects having as their purpose the preservation for public benefit of properties that are significant in American history, architecture, archeology, and culture; and

(3) to establish a program of matching grants-in-aid to the National Trust for Historic Preservation in the United States, chartered by act of Congress approved October 26, 1949 (63 Stat. 927), as amended, for the purpose of carrying out the responsibilities of the National Trust.

(4) to withhold from disclosure to the public, information relating to the location of sites or objects listed on the National Register whenever he determines that the disclosure of specific information would create a risk of destruction or harm to such sites or objects.

(b) As used in this Act--

(1) The term "State" includes, in addition to the several States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(2) The term "project" means programs of State and local governments and other public bodies and private organizations and individuals for the acquisition of title or interests in, and for the development of, any district, site, building, structure, or object that is significant in American history, architecture, archeology, and culture, or property used in connection therewith, and for its development in order to assure the preservation for public benefit of any such historical properties.

(3) The term "historic preservation" includes the protection, rehabilitation, restoration, and reconstruction of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, or culture.

(4) The term "Secretary" means the Secretary of the Interior.
Sec. 102. (a) No grant may be made under this Act--

(1) unless application therefor is submitted to the Secretary in accordance with regulations and procedures prescribed by him;

(2) unless the application is in accordance with the comprehensive statewide historic preservation plan which has been approved by the Secretary after considering its relationship to the comprehensive statewide outdoor recreation plan prepared pursuant to the Land and Water Conservation Fund Act of 1965 (78 Stat. 897);

(3) for more than 50 per centum of the total cost involved, as determined by the Secretary and his determination shall be final;

(4) unless the grantee has agreed to make such reports, in such form and containing such information as the Secretary may from time to time require;

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(5) unless the grantee has agreed to assume, after completion of the project, the total costs of the continued maintenance, repair, and administration of the property in a manner satisfactory to the Secretary; and

(6) until the grantee has complied with such further terms and conditions as the Secretary may deem necessary or advisable.

(b) The Secretary may in his discretion waive the requirements of subsection (a), paragraphs (2) and (5) of this section for any grant under this Act to the National Trust for Historic Preservation in the United States, in which case a grant to the National Trust may include funds for the maintenance, repair, and administration of the property in a manner satisfactory to the Secretary.

(c) The Secretary may in his discretion waive the requirements of paragraph (3) of subsection (a) of this section for the purposes of making grants for the preparation of statewide historic preservation plans and surveys and project plans. Any grant made pursuant to this subsection may not exceed 70 per centum of the cost of a project, and the total of such grants made pursuant to this subsection in any one fiscal year may not exceed one-half of the funds appropriated for that fiscal year pursuant to Section 108 of this Act.

(d) No State shall be permitted to utilize the value of real property obtained before the date of approval of this Act in meeting the remaining cost of a project for which a grant is made under this Act.

Sec. 103. (a) The amounts appropriated and made available for grants to the States for comprehensive statewide historic surveys and plans under this Act shall be apportioned among the States by the Secretary on the basis of needs as determined by him:

(b) The amounts appropriated and made available for grants to the States for projects under this Act for each fiscal year shall be apportioned among the States by the Secretary in accordance with needs as disclosed in approved statewide historic preservation plans.

The Secretary shall notify each State of its apportionment, and the amounts thereof shall be available thereafter for payment to such State for projects in accordance with the provisions of this Act. Any amount of any apportionment that has not been paid or obligated by the Secretary during the fiscal year in which such notification is given, and for two fiscal years thereafter, shall be reapportioned by the Secretary in accordance with this subsection.

Sec. 104. (a) No grant may be made by the Secretary for or on account of any survey or project under this Act with respect to which financial assistance has been given or promised under any other Federal program or activity, and no financial assistance may be given under any other Federal program or activity for or on account of any survey or project with respect to which assistance has been given or promised under this Act.

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(b) In order to assure consistency in policies and actions under this Act with other related Federal programs and activities, and to assure coordination of the planning acquisition, and development assistance to States under this Act with other related Federal programs and activities, the President may issue such regulations with respect thereto as he deems desirable, and such assistance may be provided only in accordance with such regulations.

Sec. 105. The beneficiary of assistance under this Act shall keep such records as the Secretary shall prescribe, including records which fully disclose the disposition by the beneficiary of the proceeds of such assistance, the total cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

Sec. 106. The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or Federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under Title II of this Act a reasonable opportunity to comment with regard to such undertaking.

Sec. 107. Nothing in this Act shall be construed to be applicable to the White House and its grounds, the Supreme Court building and its grounds, or the United States Capitol and its related buildings and grounds.

Sec. 108. To carry out the provisions of this Act, there is hereby established the Historic Preservation Fund (hereafter referred to as the 'fund') in the Treasury of the United States.

There shall be covered in to such fund \$24,400,000 for fiscal year 1977, \$100,000,000 for fiscal year 1978, \$100,000,000 for fiscal year 1979, \$150,000,000 for fiscal year 1980, and \$150,000,000 for fiscal year 1981, from revenues due and payable to the United States under the Outer Continental Shelf Lands Act (67 Stat. 462, 469), as amended (43 U.S.C. 338), and/or under the Act of June 4, 1920 (41 Stat. 813), as amended (30 U.S.C. 191), notwithstanding any provision of law that such proceeds shall be credited to miscellaneous receipts of the Treasury. Such moneys shall be used only to carry out the purposes of this Act and shall be available for expenditure only when appropriated by the Congress. Any moneys not appropriated shall remain available in the fund until appropriated for said purposes: Provided, that appropriations made pursuant to this paragraph may be made without fiscal year limitation.

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TITLE II

Sec. 201. (a) There is established as an independent agency of the United States Government an Advisory Council on Historic Preservation (hereinafter referred to as the 'Council') which shall be composed of twenty-nine members as follows:

- (1) The Secretary of the Interior;
- (2) The Secretary of Housing and Urban Development;
- (3) The Secretary of Commerce;
- (4) The Administrator of the General Services Administration;
- (5) The Secretary of the Treasury;
- (6) The Attorney General;
- (7) The Secretary of Agriculture;
- (8) The Secretary of Transportation;
- (9) The Secretary of State;
- (10) The Secretary of Defense;
- (11) The Secretary of Health, Education, and Welfare;
- (12) The Chairman of the Council on Environmental Quality;
- (13) The Chairman of the Federal Council on the Arts and Humanities;
- (14) The Architect of the Capitol;
- (15) The Secretary of the Smithsonian Institution;
- (16) The Chairman of the National Trust for Historic Preservation;
- (17) The President of the National Conference; and
- (18) Twelve appointed by the President from outside the Federal

Government. In making these appointments, the President shall give due consideration to the selection of officers of State and local governments and individuals who are significantly interested and experienced in the matters to be considered by the Council.

(b) Each member of the Council specified in paragraphs (1) through (17) of subsection (a) may designate another officer of his department, agency, or organization to serve on the Council in his stead.

(c) Each member of the Council appointed under paragraph (18) of subsection (a) shall serve for a term of five years from the expiration of his predecessor's term; except that the members first appointed under that paragraph shall serve for terms of from one to five years; as designated by the President at the time of appointment, in such manner as to insure that the terms of not less than one nor more than two of them will expire in any one year.

(d) A vacancy in the Council shall not affect its powers, but shall be filled in the same manner as the original appointment (and for the balance of the unexpired term).

(e) The Chairman and the Vice Chairman of the Council shall be designated by the President. During the absence or disability of the Chairman or when the office is vacant, the Vice Chairman shall act in the place of the Chairman.

(f) Fifteen members of the Council shall constitute a quorum.

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→ Sec. 202. (a) The Council shall--

(1) Advise the President and the Congress on matters relating to historic preservation; recommend measures to coordinate activities of Federal, State, and local agencies and private institutions and individuals relating to historic preservation; and advise on the dissemination of information pertaining to such activities;

(2) Encourage, in cooperation with the National Trust for Historic Preservation and appropriate private agencies, public interest and participation in historic preservation;

(3) Recommend the conduct of studies in such areas as the adequacy of legislative and administrative statutes and regulations pertaining to historic preservation activities of State and local governments and the effects of tax policies at all levels of government on historic preservation;

(4) Advise as to guidelines for the assistance of State and local governments in drafting legislation relating to historic preservation; and

(5) Encourage, in cooperation with appropriate public and private agencies and institutions, training and education in the field of historic preservation.

(b) The Council shall submit annually a comprehensive report of its activities and the results of its studies to the President and the Congress and shall from time to time submit such additional and special reports as it deems advisable. Each report shall propose such legislative enactments and other actions as, in the judgment of the Council, are necessary and appropriate to carry out its recommendations.

Sec. 203. The Council is authorized to secure directly from any department, bureau, agency, board, commission, office, independent establishment or instrumentality of the executive branch of the Federal Government information, suggestions, estimates, and statistics for the purpose of this title; and each such department, bureau, agency, board, commission, office, independent establishment or instrumentality is authorized to furnish such information, suggestions, estimates, and statistics to the extent permitted by law and within available funds.

Sec. 204. The members of the Council specified in paragraphs (1) through (17) of section 201(a) shall serve without additional compensation. The members of the Council appointed under paragraph (18) of section 201(a) shall receive \$100 per diem when engaged in the performance of the duties of the Council. All members of the Council shall receive reimbursement for necessary traveling and subsistence expenses incurred by them in the performance of the duties of the Council. ←

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Sec. 205. (a) There shall be an Executive Director of the Council who shall be appointed in the competitive service by the Chairman, report directly to the Council, and perform such functions and duties as the Council may prescribe.

(b) The Council shall have a General Counsel, who shall be appointed by the Executive Director. The General Counsel shall report directly to the Executive Director and serve as the Council's legal advisor. The Executive Director shall appoint such other attorneys as may be necessary to assist the General Counsel, represent the Council in courts of law whenever appropriate, assist the Department of Justice in handling litigation concerning the Council in courts of law, and perform such other legal duties and functions as the Executive Director and the Council may direct.

(c) The Executive Director of the Council may appoint and fix the compensation of such officers and employees in the competitive service as are necessary to perform the functions of the Council at rates not to exceed that now or hereafter prescribed for the highest rate for grade 15 of the General Schedule under section 5332 of title 5, United States Code: Provided, however, That the Executive Director, with the concurrence of the Chairman, may appoint and fix the compensation of not to exceed five employees in the competitive service at rates not to exceed that now or hereafter prescribed for the highest rate of grade 17 of the General Schedule under section 5332 of title 5, United States Code.

(d) The Executive Director shall have power to appoint and fix the compensation of such additional personnel as may be necessary to carry out its duties, without regard to the provisions of the civil service laws and the Classification Act of 1949.

(e) The Executive Director of the Council is authorized to procure expert and consultant services in accordance with the provisions of section 3109 of title 5, United States Code.

(f) Financial and administrative services (including those related to budgeting, accounting, financial reporting, personnel and procurement) shall be provided the Council by the Department of the Interior, for which payments shall be made in advance, or by reimbursement, from funds of the Council in such amounts as may be agreed upon by the Chairman of the Council and the Secretary of the Interior: Provided, That the regulations of the Department of the Interior for the collection of indebtedness of personnel resulting from erroneous payments (5 U.S.C. 46e) shall apply to the collection of erroneous payments made to or on behalf of a Council employee, and regulations of said Secretary for the administrative controls of funds (31 U.S.C. 665(g)) shall apply to appropriations of the Council: And provided further, That the Council shall not be required to prescribe such regulations.

(g) The members of the Council specified in paragraphs (1) through (16) of section 201(a) shall provide the Council, with or without reimbursement as may be agreed upon by the Chairman and the members

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with such funds, personnel, facilities, and services under their jurisdiction and control as may be needed by the Council to carry out its duties, to the extent that such funds, personnel facilities, and services are requested by the Council and are otherwise available for that purpose. To the extent of available appropriations, the Council may obtain, by purchase, rental, donation, or otherwise, such additional property, facilities, and services as may be needed to carry out its duties.

Sec. 206. (a) The participation of the United States as a member in the International Centre for the Study of the Preservation and Restoration of Cultural Property is hereby authorized.

(b) The Council shall recommend to the Secretary of State, after consultation with the Smithsonian Institution and other public and private organizations concerned with the technical problems of preservation the members of the official delegation which will participate in the activities of the Centre on behalf of the United States. The Secretary of State shall appoint the members of the official delegation from the persons recommended to him by the Council.

(c) For the purposes of this section there are authorized to be appropriated not more than \$175,000 per year for fiscal years 1977, 1978, and 1979: Provided, That no appropriation is authorized and no payment shall be made to the Centre in excess of 25 per centum of the total annual assessment of such organization.

Sec. 207. So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, held, used, programmed, or available or to be made available by the Department of the Interior in connection with the functions of the Council, as the Director of the Office of Management and Budget shall determine, shall be transferred from the Department to the Council within 60 days of the effective date of this Act.

Sec. 208. Any employee in the competitive service of the United States transferred to the Council under the provisions of this section shall retain all the rights, benefits, and privileges pertaining thereto held prior to such transfer.

Sec. 209. The Council is exempt from the provisions of the Federal Advisory Committee Act (86 Stat. 770), and the provisions of the Administrative Procedure Act (80 Stat. 381) shall govern the operations of the Council.

Sec. 210. Whenever the Council transmits any legislative recommendations, or testimony, or comments on legislation to the President or the Office of Management and Budget, it shall concurrently transmit copies thereof to the House Committee on Interior and Insular Affairs. No officer or agency of the United States shall have any authority to require the Council to submit its legislative recommendations, or testimony, or comments on legislation to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress. In instances in which the Council voluntarily seeks to obtain the

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comments or review of any officer or agency of the United States, the Council shall include a description of such actions in its legislative recommendations, testimony, or comments on legislation which it transmits to the Congress.

Sec. 211. The Council is authorized to promulgate such rules and regulations as it deems necessary to govern the implementation of section 106 of this Act.

Sec. 212. (a) The Council shall submit its budget annually as a related agency of the Department of the Interior. To carry out the provisions of this title, there are authorized to be appropriated not more than \$1,500,000 in fiscal year 1977, \$1,750,000 in fiscal year 1978, and \$2,000,000 in fiscal year 1979.

(b) Whenever the Council submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit copies of that estimate or request to the House and Senate Appropriations Committees and the House Committee on Interior and Insular Affairs and the Senate Committee on Interior and Insular Affairs.

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Executive Order 11593

Title 3—The President

EXECUTIVE ORDER 11593

Protection and Enhancement of the Cultural Environment

By virtue of the authority vested in me as President of the United States and in furtherance of the purposes and policies of the National Environmental Policy Act of 1969 (83 Stat. 852, 42 U.S.C. 4321 et seq.), the National Historic Preservation Act of 1966 (80 Stat. 915, 16 U.S.C. 470 et seq.), the Historic Sites Act of 1935 (49 Stat. 666, 16 U.S.C. 461 et seq.), and the Antiquities Act of 1906 (34 Stat. 225, 16 U.S.C. 431 et seq.), it is ordered as follows:

SECTION 1. *Policy.* The Federal Government shall provide leadership in preserving, restoring and maintaining the historic and cultural environment of the Nation. Agencies of the executive branch of the Government (hereinafter referred to as "Federal agencies") shall (1) administer the cultural properties under their control in a spirit of stewardship and trusteeship for future generations, (2) initiate measures necessary to direct their policies, plans and programs in such a way that federally owned sites, structures, and objects of historical, architectural or archaeological significance are preserved, restored and maintained for the inspiration and benefit of the people, and (3), in consultation with the Advisory Council on Historic Preservation (16 U.S.C. 470i), institute procedures to assure that Federal plans and programs contribute to the preservation and enhancement of non-federally owned sites, structures and objects of historical, architectural or archaeological significance.

SEC. 2. *Responsibilities of Federal agencies.* Consonant with the provisions of the acts cited in the first paragraph of this order, the heads of Federal agencies shall:

(a) no later than July 1, 1973, with the advice of the Secretary of the Interior, and in cooperation with the liaison officer for historic preservation for the State or territory involved, locate, inventory, and nominate to the Secretary of the Interior all sites, buildings, districts, and objects under their jurisdiction or control that appear to qualify for listing on the National Register of Historic Places.

(b) exercise caution during the interim period until inventories and evaluations required by subsection (a) are completed to assure that any federally owned property that might qualify for nomination is not inadvertently transferred, sold, demolished or substantially altered. The agency head shall refer any questionable actions to the Secretary of the Interior for an opinion respecting the property's eligibility for inclusion on the National Register of Historic Places. The Secretary shall consult with the liaison officer for historic preservation for the State or territory

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involved in arriving at his opinion. Where, after a reasonable period in which to review and evaluate the property, the Secretary determines that the property is likely to meet the criteria prescribed for listing on the National Register of Historic Places, the Federal agency head shall reconsider the proposal in light of national environmental and preservation policy. Where, after such reconsideration, the Federal agency head proposes to transfer, sell, demolish or substantially alter the property he shall not act with respect to the property until the Advisory Council on Historic Preservation shall have been provided an opportunity to comment on the proposal.

(c) initiate measures to assure that where as a result of Federal action or assistance a property listed on the National Register of Historic Places is to be substantially altered or demolished, timely steps be taken to make or have made records, including measured drawings, photographs and maps, of the property, and that copy of such records then be deposited in the Library of Congress as part of the Historic American Buildings Survey or Historic American Engineering Record for future use and reference. Agencies may call on the Department of the Interior for advice and technical assistance in the completion of the above records.

(d) initiate measures and procedures to provide for the maintenance, through preservation, rehabilitation, or restoration, of federally owned and registered sites at professional standards prescribed by the Secretary of the Interior.

(e) submit procedures required pursuant to subsection (d) to the Secretary of the Interior and to the Advisory Council on Historic Preservation no later than January 1, 1972, and annually thereafter, for review and comment.

(f) cooperate with purchasers and transferees of a property listed on the National Register of Historic Places in the development of viable plans to use such property in a manner compatible with preservation objectives and which does not result in an unreasonable economic burden to public or private interests.

SEC. 3. *Responsibilities of the Secretary of the Interior.* The Secretary of the Interior shall:

(a) encourage State and local historic preservation officials to evaluate and survey federally owned historic properties and, where appropriate, to nominate such properties for listing on the National Register of Historic Places.

(b) develop criteria and procedures to be applied by Federal agencies in the reviews and nominations required by section 2(a). Such criteria and procedures shall be developed in consultation with the affected agencies.

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(c) expedite action upon nominations to the National Register of Historic Places concerning federally owned properties proposed for sale, transfer, demolition or substantial alteration.

(d) encourage State and Territorial liaison officers for historic preservation to furnish information upon request to Federal agencies regarding their properties which have been evaluated with respect to historic, architectural or archaeological significance and which as a result of such evaluations have not been found suitable for listing on the National Register of Historic Places.

(e) develop and make available to Federal agencies and State and local governments information concerning professional methods and techniques for preserving, improving, restoring and maintaining historic properties.

(f) advise Federal agencies in the evaluation, identification, preservation, improvement, restoration and maintenance of historic properties.

(g) review and evaluate the plans of transferees of surplus Federal properties transferred for historic monument purposes to assure that the historic character of such properties is preserved in rehabilitation, restoration, improvement, maintenance and repair of such properties.

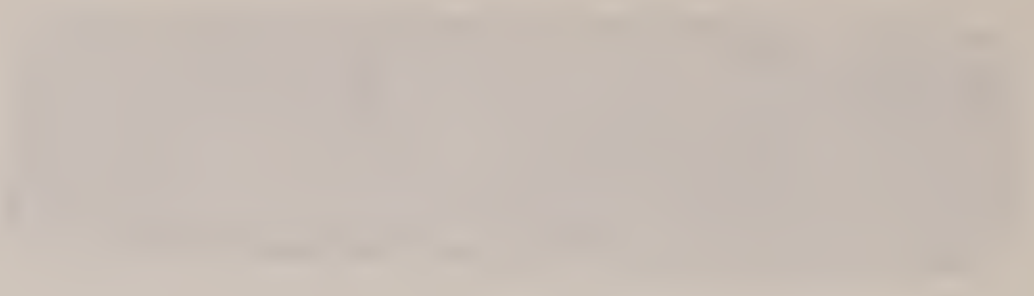
(h) review and comment upon Federal agency procedures submitted pursuant to section 2(e) of this order.



THE WHITE HOUSE,
May 13, 1971.

SECTION 3
BACK-UP DOCUMENTS

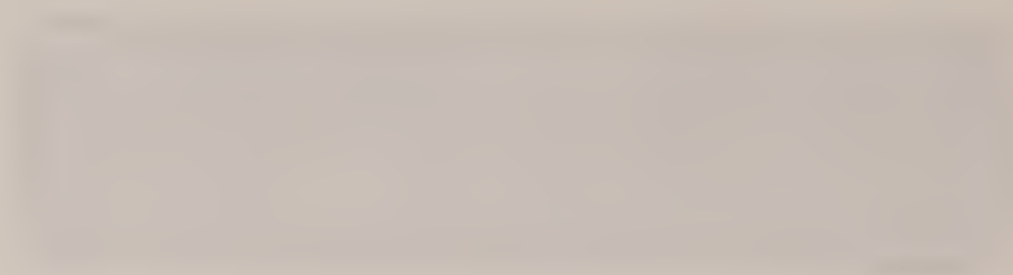
**1. BLM MANUAL 8100 -
CULTURAL RESOURCE MANAGEMENT**



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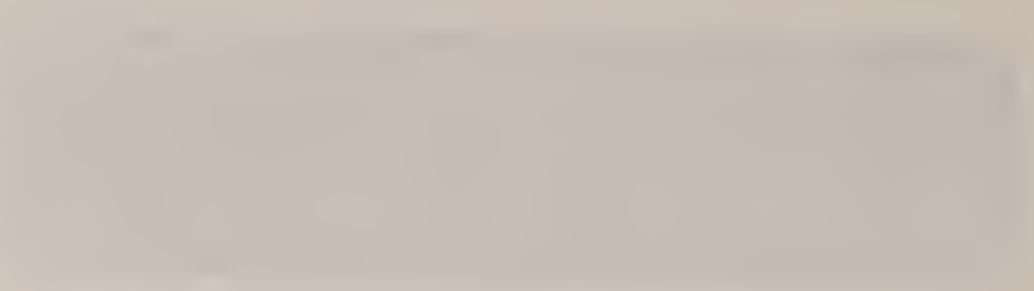
2. FACT SHEET- THE NATIONAL
HISTORIC PRESERVATION PROGRAM



1. 1975-1976 (1975-1976) 1975-1976
1975-1976 (1975-1976) 1975-1976

SECTION 3
BACK-UP DOCUMENTS

**3. FACT SHEET- ADVISORY COUNCIL
ON HISTORIC PRESERVATION**



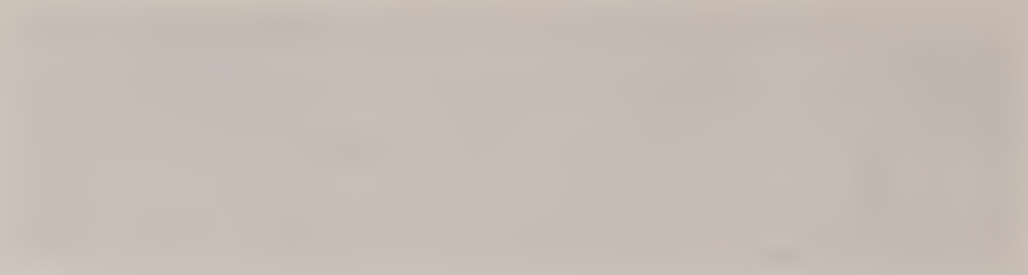
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**4. NATIONAL HISTORIC PRESERVATION
ACT OF 1966, AS AMENDED (1981)**

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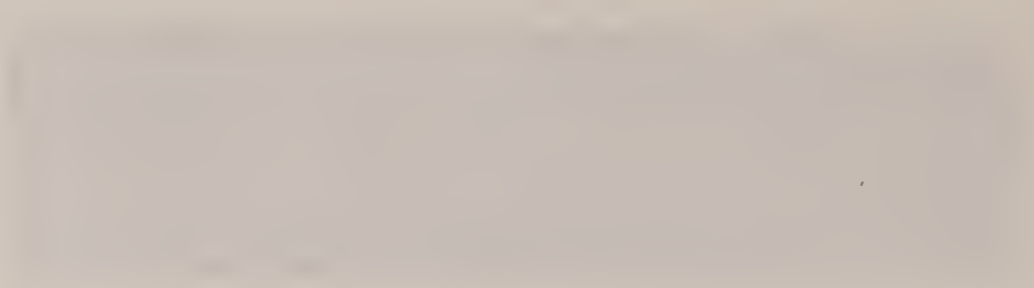
**5. AMERICAN INDIAN RELIGIOUS
FREEDOM ACT OF 1978**



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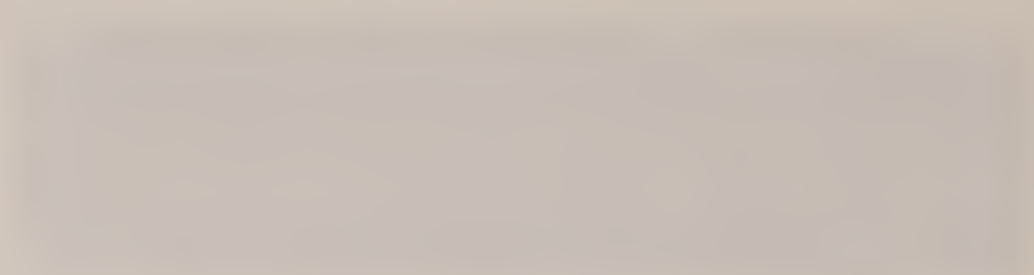
**6. THE WHITE HOUSE PRESS RELEASE
ON AMERICAN INDIAN RELIGIOUS
FREEDOM (AUGUST 12,1978)**



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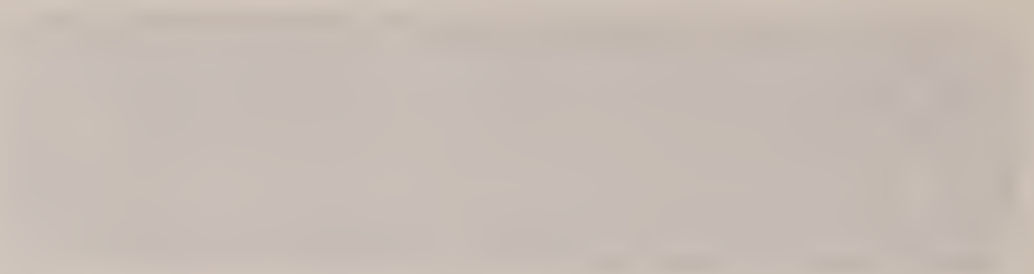
**7. ARCHAEOLOGICAL RESOURCES
PROTECTION ACT OF 1979**



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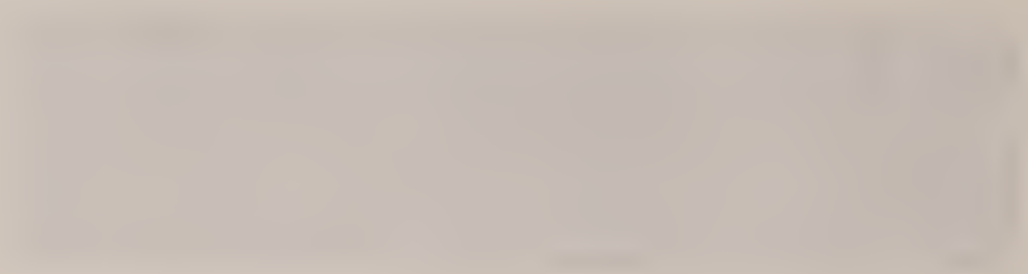
**8. BLM WASHINGTON OFFICE
INSTRUCTION MEMORANDUM
NO. 83-746 (AUGUST 4, 1983),
INTERIM POLICY ON CULTURAL
RESOURCE INVENTORY;
MODIFICATION OF BLM MANUAL BILL**



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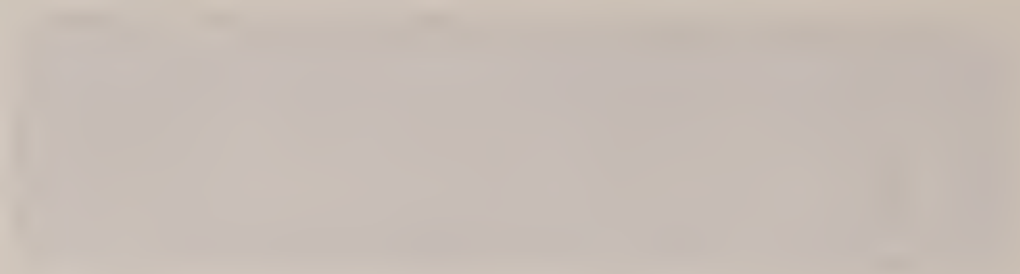
**9. BLM MANUAL BILL-
CULTURAL RESOURCE INVENTORY
AND EVALUATION (EXTRACTS)**



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**10. 36 CFR PART 800-
PROTECTION OF HISTORIC AND
CULTURAL PROPERTIES**



1850-1851

Fact Sheet

Advisory Council On Historic Preservation

1522 K Street, NW, Washington, DC 20005

THE NATIONAL HISTORIC PRESERVATION PROGRAM:

Changes resulting from enactment of the National Historic Preservation Act Amendments, 1980.

(Public Law 96-515; enacted December 12, 1980.)

Under previous law:

Under law as now amended:

National Register of Historic Places

Established and maintained by the Secretary of the Interior. Includes buildings, sites, districts, structures and objects of national State, and local significance in history, architecture, archeology and culture

Continues existing National Register program; requires public and local government participation in nomination process; prohibits listing of properties if owner objects.

National Historic Landmark Program

Maintained by the Secretary of the Interior but has been jeopardized by recent court ruling questioning authorities and procedures

Specifically authorizes NHL program, legislatively corrects deficiencies cited by court

State Historic Preservation programs

General authority for grants to States for surveys, planning and preservation of historic properties. Requires comprehensive state-wide historic preservation plan to be approved by Secretary. Current State structure of State Historic Preservation Officer, State Review Boards, and other elements are administrative creations without specific statutory authority

Strengthens role of State programs and establishes statutory authority for existing elements of program (SHPO, review boards, public participation, etc.). Establishes statutory standards for State programs, providing greater autonomy for States

Local government participation

No present authority

Requires States to establish mechanism to certify qualified local governments to participate in National Register nomination and funding programs

Grants to National Trust for Historic Preservation

Authorizes 50% matching grants to National Trust

Continues same authority

Other grants

Administratively established Secretary's "discretionary fund" for emergency needs and innovative projects

Authorizes 10% of funds for preserving threatened NHL's, demonstration projects, and training in preservation skills

Fund authority

Authorizes \$24.4 million for FY 77, \$100 million for FY 78 & 79 and \$150 million for FY 80 & 81

Authorizes \$150 million annually for FY 82-87

Loan guarantees

No current authority program

Authorizes federally guaranteed market-rate loans for preserving National Register properties; amount of insured loans can equal unappropriated balance in National Historic Preservation Fund (currently around \$370 million).

Federal agency responsibilities	No specific requirements in statute, but Executive Order 11593 requires surveys of Federal lands, nominations of federally owned properties to National Register, and other actions relating to management of federally owned historic properties.	Establishes statutory responsibilities for managing federally-owned historic properties: surveys and nominations; recording of buildings to be lost; appointment of agency preservation officers; leasing of historic Federal buildings, and increased sensitivity of Federal programs to meeting preservation objectives.
Preservation awards program	No current authority or program	Authorizes Secretarial awards to government officials and Presidential awards to citizens for preservation achievements.
Protection of historic properties	Section 106 requires agencies to obtain Council comments whenever a Federal or federally supported or approved undertaking will have an effect on properties on or eligible for the National Register.	Section 106 authorities are unchanged; Federal agencies must adhere to higher standard of care when planning projects that affect NHL's.
World Heritage Convention	No legislative authority but the Secretary of the Interior coordinates U.S. involvement in World Heritage Convention	Specifically authorizes Secretary to direct U.S. participation in World Heritage Convention. Sets up procedure for nomination of World Heritage properties.
National Museum of the Building Arts	No current authority or program.	Establishes museum in the Pension Building to promote interest and education in the building arts and display building arts exhibits
Congressional review of Interior regulations	No current provision	Provides 30 day review period for Senate and House Committee review of Interior regulations.
Intangible cultural resources	No current authority or program	Requires Secretary of the Interior to report on preserving intangible cultural resources.
Federal tax policies	No current authority or program	Requires Council to report on effect of Federal tax laws on preservation.
Pennsylvania Avenue Development Corp.	No similar current provision	Requires PADC to report on additional measures that could promote preservation on the Pennsylvania Avenue National Historic Site
Cultural Parks	No current authority or program	Requires Secretary of the Interior to report on establishing national system for cultural parks
Arson	No current authority or program	Requires Secretary of the Interior to report on fire in historic properties.
Attorneys Fees	No current provision	Authorizes Federal courts to award attorneys fees and costs in suits under this act

Please note: This summary highlights major provisions of the program. Many detailed changes are made in the program that are important. The full text of Public Law 96-515 should be consulted regarding these changes. A separate summary of Title II, which affects the Advisory Council on Historic Preservation, has also been prepared.

For further information about the Council, contact: Marcia Axtmann Smith, Program Coordinator, Advisory Council on Historic Preservation, 1522 K St., NW, Washington, D.C. 20005.##

Issued December 15, 1980

Fact Sheet

Advisory Council On Historic Preservation

1522 K Street, NW, Washington, DC 20005

ADVISORY COUNCIL ON HISTORIC PRESERVATION:

Changes resulting from the enactment of the National Historic Preservation Act Amendments, 1980.
(Public Law 96-515; enacted December 12, 1980.)

Under previous law:

Under law as now amended:

Membership

29 members

Secretaries of Interior, Housing and Community Development, Commerce, Treasury, Transportation, Agriculture, State, Defense, Health & Human Services; Administrator of General Services Administration; Attorney General; Council on Environmental Quality; and the Chairman of the Federal Council on the Arts and Humanities; Architect of the Capitol; Secretary of the Smithsonian Institution; Chairman of the National Trust for Historic Preservation; President of the National Conference of State Historic Preservation Officers; and 12 non-Federal presidential appointees.

19 members

- Four members of general public appointed by President (Includes Chairman)
- Secretary of the Interior & Agriculture, Architect of the Capitol and four other Federal agency heads designated by President
- One governor and one mayor
- Chairman of the National Trust for Historic Preservation
- Four historic preservation experts appointed by President
- President, National Conference of State Historic Preservation Officers

Chairman & Vice Chairman

Designated by President

Designated by President from general public (chairman), expert members, governor or mayor(vice chairman)

Terms of Office

- Five years for appointees

Four years for appointees

General Advisory Authorities

- Advise the President and the Congress on historic preservation matters
- coordinate historic preservation activities of Federal, State, and local agencies and private institutions and individuals
- disseminate information pertaining to historic preservation matters
- encourage, in cooperation with the National Trust for Historic Preservation, public participation in historic preservation
- recommend studies in such areas as historic preservation laws for State and local governments and tax policies at all levels of government on historic preservation
- advise as to guidelines for State and local legislation historic preservation
- encourage, in cooperation with appropriate public and private agencies and institutions, training and education in historic preservation
- annually report on its activities and the results of its studies to the President and the Congress and submit special reports as it deems advisable.

Same as existing law, with additional authority to review Federal programs and recommend improvements in coordination with historic preservation programs and policies and inform and educate government agencies, organizations and the public concerning Council activities. Also requires Council report on Federal tax laws along with legislative recommendations to be submitted to Congress within one year.

Project Review	-Federal agencies must seek Council comments on Federal and federally supported or approved projects affecting properties on or eligible for the National Register	Same; some technical clarifications have been made, recognizing memoranda of agreement and increasing role of Interior
Exemption of programs	No current authority	Authorizes system for exemption of programs from Section 106 when impacts are negligible
Participation of local governments	No current provisions	Requires procedures for participation of local governments in Section 106 process.
Administration	-Authorizes Executive Director to appoint necessary staff and directs Department of Interior to provide financial and administrative services	Same; some technical clarifications have been made.
Relation to Congress	Requires concurrent submission of legislative recommendations and budget to Congress whenever submitted to President or Office of Management and Budget	Concurrent submission of budget retained, but deleted for legislative recommendations.
Appropriations Authority	\$2.5 million for FY 1981, 1982 and 1983	Same
Other Authorities	Existing authorities unchanged	Authorizes cooperative role with Interior in implementing World Heritage Convention Requires Federal agencies to consult with Council regarding contracts to manage historic properties Requires Federal agencies to seek Council comments on actions affecting nationally significant properties.

Please note: This summary highlights Title II of Public Law 96-515. Many detailed and important changes to the National Historic Preservation Program are also contained in this law. The full text of Public Law 96-515 should be consulted regarding these changes.

For further information about the Council, contact: Marcia Axtmann Smith, Program Coordinator, Advisory Council on Historic Preservation, 1522 K St., NW, Washington, D.C. 20005.##

Issued December 15, 1980

National Historic Preservation Act of 1966, as amended

**This material was prepared by the Advisory Council on Historic
Preservation, Washington, D.C.**

National Historic Preservation Act of 1966, as amended

AN ACT to Establish a Program for the Preservation of Additional Historic Properties throughout the Nation, and for Other Purposes, Approved October 15, 1966 (Public Law 89-665; 80 STAT. 915; 16 U.S.C. 470) as amended by Public Law 91-243, Public Law 93-54, Public Law 94-422, Public Law 94-458, Public Law 96-199, Public Law 96-244, and Public Law 96-515).

Section 1

Short title

(a) This Act may be cited as the "National Historic Preservation Act."

Purpose of the Act

(b) The Congress finds and declares that—

(1) the spirit and direction of the Nation are founded upon and reflected in its historic heritage;

(2) the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people;

(3) historic properties significant to the Nation's heritage are being lost or substantially altered, often inadvertently, with increasing frequency;

(4) the preservation of this irreplaceable heritage is in the public interest so that its vital legacy of cultural, educational, aesthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Americans;

(5) in the face of ever-increasing extensions of urban centers, highways, and residential, commercial, and industrial developments, the present governmental and nongovernmental historic preservation programs and activities are inadequate to insure future generations a genuine opportunity to appreciate and enjoy the rich heritage of our Nation;

(6) the increased knowledge of our historic resources, the establishment of better means of identifying and administering them, and the encouragement of their preservation will improve the planning and execution of Federal and federally assisted projects and will assist economic growth and development; and

(7) although the major burdens of historic preservation have been borne and major efforts initiated by private agencies and individuals, and both should continue to play a vital role, it is nevertheless necessary and appropriate for the Federal Government to accelerate its historic preservation programs and activities, to give maximum encouragement to agencies and individuals undertaking preservation by private means, and to assist State and local governments and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities.

Section 2

Declaration of policy

It shall be the policy of the Federal Government, in cooperation with other nations and in partnership with the States, local governments, Indian tribes, and private organizations and individuals to—

(1) use measures, including financial and technical assistance, to foster conditions under which our modern society and our prehistoric and historic resources can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations;

(2) provide leadership in the preservation of the prehistoric and historic resources of the United States and of the international community of nations;

(3) administer federally owned, administered, or controlled prehistoric and historic resources in a spirit of stewardship for the inspiration and benefit of present and future generations;

(4) contribute to the preservation of nonfederally owned prehistoric and historic resources and give maximum encouragement to organizations and individuals undertaking preservation by private means;

(5) encourage the public and private preservation and utilization of all usable elements of the Nation's historic built environment; and

(6) assist State and local governments and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities.

TITLE I

Section 101

*National Register of Historic Places,
expansion and maintenance*

(a)(1)(A) The Secretary of the Interior is authorized to expand and maintain a National Register of Historic Places composed of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture.

National Historic Landmarks, designation

(B) Properties meeting the criteria for National Historic Landmarks established pursuant to paragraph (2) shall be designated as "National Historic Landmarks" and included on the National Register, subject to the requirements of paragraph (6). All historic properties included on the National Register on the date of enactment of the National Historic Preservation Act Amendments of 1980 shall be deemed to be included on the National Register as of their initial listing for purposes of this Act. All historic properties listed in the Federal Register of February 6, 1979, as "National Historic Landmarks" or thereafter prior to the effective date of this Act are declared by Congress to be National Historic Landmarks of national historic significance as of their initial listing as such in the Federal Register for purposes of this Act and the Act of August 21, 1935 (49 Stat. 666); except that in cases of National Historic Landmark districts for which no boundaries have been established, boundaries must first be published in the Federal Register and submitted to the Committee on Energy and Natural Resources of the United States Senate and to the Committee on Interior and Insular Affairs of the United States House of Representatives.

*Criteria for National Register and National
Historic Landmarks and regulations*

(2) The Secretary in consultation with national historic and archeological associations, shall establish or revise criteria for properties to be included on the National Register and criteria for National Historic Landmarks, and shall also promulgate or revise regulations as may be necessary for—

(A) nominating properties for inclusion in, and removal from, the National Register and the recommendation of properties by certified local governments;

(B) designating properties as National Historic Landmarks and removing such designation;

(C) considering appeals from such recommendations, nomination, removals, and designations (or any failure or refusal by a nominating authority to nominate or designate);

(D) nominating historic properties for inclusion in the World Heritage List in accordance with the terms of the Convention concerning the Protection of the World Cultural and Natural Heritage;

(E) making determinations of eligibility of properties for inclusion on the National Register; and

(F) notifying the owner of a property, any appropriate local governments, and the general public, when the property is being considered for inclusion on the National Register, for designation as a National Historic Landmark or for nomination to the World Heritage List.

Nominations to the National Register

(3) Subject to the requirements of paragraph (6), any State which is carrying out a program approved under subsection (b), shall nominate to the Secretary properties which meet the criteria promulgated under subsection (a) for inclusion on the National Register. Subject to paragraph (6), any property nominated under this paragraph or under section 110(a)(2) shall be included on the National Register on the date forty-five days after receipt by the Secretary of the nomination and the necessary documentation, unless the Secretary disapproves such nomination within such forty-five day period or unless an appeal is filed under paragraph (5).

*Nominations from individuals and local
governments*

(4) Subject to the requirements of paragraph (6) the Secretary may accept a nomination directly from any person or local government for inclusion of a property on the National Register only if such property is located in a State where there is no program approved under subsection (b). The Secretary may include on the National Register any property for which such a nomination is made if he determines that such property is eligible in accordance with the regulations promulgated under paragraph (2). Such determinations shall be made within ninety days from the date of nomination unless the nomination is appealed under paragraph (5).

Appeals of nominations

(5) Any person or local government may appeal to the Secretary a nomination of any historic property for inclusion on the National Register and may appeal to the Secretary the failure or refusal of a nominating authority to nominate a property in accordance with this subsection.

Owner participation in nomination process

(6) The Secretary shall promulgate regulations requiring that before any property or district may be included on the National Register or designated as a National Historic Landmark, the owner or owners of such property, or a majority of the owners of the properties within the district in the case of an historic district, shall be given the opportunity (including a reasonable period of time) to concur in, or object to, the nomination of the property or district for such inclusion or designation. If the owner or owners of any privately owned property, or a majority of the owners of such properties within the district in the case of an historic district, object to such inclusion or designation, such property shall not be included on the National Register or designated as a National Historic Landmark until such objection is withdrawn. The Secretary shall review the nomination of the property or district where any such objection has been made and shall determine whether or not the property or district is eligible for such inclusion or designation, and if the Secretary determines that such property or district is eligible for such inclusion or designation, he shall inform the Advisory Council on Historic Preservation, the appropriate State Historic Preservation Officer, the appropriate chief elected local official and the owner or owners of such property, of his determination. The regulations under this paragraph shall include provisions to carry out the purposes of this paragraph in the case of multiple ownership of a single property.

Regulations for curation, documentation, and local government certification

(7) The Secretary shall promulgate, or revise, regulations—

(A) ensuring that significant prehistoric and historic artifacts, and associated records, subject to section 110 of this Act, the Act of June 27, 1960 (16 U.S.C. 469c), and the Archeological Resources Protection Act of 1979 (16 U.S.C. 470aa and following) are deposited in an institution with adequate long-term curatorial capabilities;

(B) establishing a uniform process and standards for documenting historic properties by public agencies and private parties for purposes of incorporation into, or complementing, the national historic architectural and engineering records within the Library of Congress; and

(C) certifying local governments, in accordance with subsection (c)(1) and for the allocation of funds pursuant to section 103(c) of this Act.

State Historic Preservation Programs

(b)(1) The Secretary, in consultation with the National Conference of State Historic Preservation Officers and the National Trust for Historic Preservation, shall promulgate or revise regulations for State Historic Preservation Programs. Such regulations shall provide that a State program submitted to the Secretary under this section shall be approved by the Secretary if he determines that the program—

Designation of the State Historic Preservation Officer (SHPO)

(A) provides for the designation and appointment by the Governor of a "State Historic Preservation Officer" to administer such program in accordance with paragraph (3) and for the employment or appointment by such officer of such professionally qualified staff as may be necessary for such purposes;

(B) provides for an adequate and qualified State historic preservation review board designated by the State Historic Preservation Officer unless otherwise provided for by State law; and

(C) provides for adequate public participation in the State Historic Preservation Program, including the process of recommending properties for nomination to the National Register.

Review of State programs

(2) Periodically, but not less than every four years after the approval of any State program under this subsection, the Secretary shall evaluate such program to make a determination as to whether or not it is in compliance with the requirements of this Act. If at any time, the Secretary determines that a State program does not comply with such requirements, he shall disapprove such program, and suspend in whole or in part assistance to such State under subsection (d)(1), unless there are adequate assurances that the program will comply with such requirements within a reasonable period of time. The Secretary may also conduct periodic fiscal audits of State programs approved under this section.

SHPO responsibilities

(3) It shall be the responsibility of the State Historic Preservation Officer to administer the State Historic Preservation Program and to—

(A) in cooperation with Federal and State agencies, local governments, and private organizations and individuals, direct and conduct a comprehensive statewide survey of historic properties and maintain inventories of such properties;

(B) identify and nominate eligible properties to the National Register and otherwise administer applications for listing historic properties on the National Register;

(C) prepare and implement a comprehensive statewide historic preservation plan;

(D) administer the State program of Federal assistance for historic preservation within the State;

(E) advise and assist, as appropriate, Federal and State agencies and local governments in carrying out their historic preservation responsibilities;

(F) cooperate with the Secretary, the Advisory Council on Historic Preservation, and other Federal and State agencies, local governments, and organizations and individuals to ensure that historic properties are taken into consideration at all levels of planning and development;

(G) provide public information, education and training, and technical assistance relating to the Federal and State Historic Preservation Programs; and

(H) cooperate with local governments in the development of local historic preservation programs and assist local governments in becoming certified pursuant to subsection (c).

Arrangements with nonprofit organizations

(4) Any State may carry out all or any part of its responsibilities under this subsection by contract or cooperative agreement with any qualified nonprofit organization or educational institution.

Approval of existing programs

(5) Any State historic preservation program in effect under prior authority of law may be treated as an approved program for purposes of this subsection until the earlier of—

(A) the date on which the Secretary approves a program submitted by the State under this subsection, or

(B) three years after the date of the enactment of the National Historic Preservation Act Amendments of 1980.

Certification of local governments

(c)(1) Any State program approved under this section shall provide a mechanism for the certification by the State Historic Preservation Officer of local governments to carry out the purposes of this Act and provide for the transfer, in accordance with section 103(c), of a portion of the grants received by the States under this Act, to such local governments. Any local government shall be certified to participate under the provisions of this section if the applicable State Historic Preservation Officer, and the Secretary, certifies that the local government—

(A) enforces appropriate State or local legislation for the designation and protection of historic properties;

(B) has established an adequate and qualified historic preservation review commission by State or local legislation;

(C) maintains a system for the survey and inventory of historic properties that furthers the purposes of subsection (b);

(D) provides for adequate public participation in the local historic preservation program, including the process of recommending properties for nomination to the National Register; and

(E) satisfactorily performs the responsibilities delegated to it under this Act.

Where there is no approved State program, a local government may be certified by the Secretary if he determines that such local government meets the requirements of subparagraphs (A) through (E); and in any such case the Secretary may make grants-in-aid to the local government for purposes of this section.

(2)(A) Before a property within the jurisdiction of the certified local government may be considered by the State to be nominated to the Secretary for inclusion on the National Register, the State Historic Preservation Officer shall notify the owner, the applicable chief local elected official, and the local historic preservation commission. The commission, after reasonable opportunity for public comment, shall prepare a report as to whether or not such property, in its opinion, meets the criteria of the National Register. Within sixty days of notice from the State Historic Preservation Officer, the chief local elected official shall transmit the report of the commission and his recommendation to the State Historic Preservation Officer. Except as provided in subparagraph (B), after receipt of such report and recommendation, or if no such report and recommendation are received within sixty days, the State shall make the nomination pursuant to section 101(a). The State may expedite such process with the concurrence of the certified local government.

(B) If both the commission and the chief local elected official recommend that a property not be nominated to the National Register, the State Historic Preservation Officer shall take no further action, unless within thirty days of the receipt of such recommendation by the State Historic Preservation Officer an appeal is filed with the State. If such an appeal is filed, the State shall follow the procedures for making a nomination pursuant to Section 101(a). Any report and recommendations made under this section shall be included with any nomination submitted by the State to the Secretary.

(3) Any local government certified under this section or which is making efforts to become so certified shall be eligible for funds under the provision of section 103(c) of this Act, and shall carry out any responsibilities delegated to it in accordance with such terms and conditions as the Secretary deems necessary or advisable.

Grants to States

(d)(1) The Secretary shall administer a program of matching grants-in-aid to the States for historic preservation projects, and State historic preservation programs, approved by the Secretary and having as their purpose the identification of historic properties and the preservation of properties included on the National Register.

Grants to the National Trust

(2) The Secretary shall administer a program of matching grants-in-aid to the National Trust for Historic Preservation in the United States, chartered by Act of Congress approved October 26, 1949 (63 Stat. 947), for the purposes of carrying out the responsibilities of the National Trust.

Direct grants for threatened National Historic Landmarks, demonstration projects, training, and displacement prevention

(3)(A) In addition to the programs under paragraphs (1) and (2), the Secretary shall administer a program of direct grants for the preservation of properties included on the National Register. Funds to support such program annually shall not exceed 10 per centum of the amount appropriated annually for the fund established under section 108. These grants may be made by the Secretary, in consultation with the appropriate State Historic Preservation Officer—

(i) for the preservation of National Historic Landmarks which are threatened with demolition or impairment and for the preservation of historic properties of World Heritage significance;

(ii) for demonstration projects which will provide information concerning professional methods and techniques having application to historic properties;

(iii) for the training and development of skilled labor in trades and crafts, and in analysis and curation, relating to historic preservation; and,

(iv) to assist persons or small businesses within any historic district included in the National Register to remain within the district.

Grants and loans to minority groups

(B) The Secretary may also, in consultation with the appropriate State Historic Preservation Officer, make grants or loans or both under this section to Indian tribes and to nonprofit organizations representing ethnic or minority groups for the preservation of their cultural heritage.

(C) Grants may be made under subparagraph (A)(i) and (iv) only to the extent that the project cannot be carried out in as effective a manner through the use of an insured loan under section 104.

Prohibition on compensating intervenors

(e) No part of any grant made under this section may be used to compensate any person intervening in any proceeding under this Act.

Guidelines for Federal agency responsibilities

(f) In consultation with the Advisory Council on Historic Preservation, the Secretary shall promulgate guidelines for Federal agency responsibilities under section 110 of this title.

Preservation standards for federally owned properties

Technical advice

Grants requirements

Waiver for the National Trust

Limitation on matching

(g) Within one year after the date of enactment of the National Historic Preservation Act Amendments of 1980, the Secretary shall establish, in consultation with the Secretaries of Agriculture and Defense, the Smithsonian Institution, and the Administrator of the General Services Administration, professional standards for the preservation of historic properties in Federal ownership or control.

(h) The Secretary shall develop and make available to Federal agencies, State and local governments, private organizations and individuals, and other nations and international organizations pursuant to the World Heritage Convention, training in, and information concerning professional methods and techniques for the preservation of historic properties and for the administration of the historic preservation program at the Federal, State, and local level. The Secretary shall also develop mechanisms to provide information concerning historic preservation to the general public including students.

Section 102

(a) No grant may be made under this Act—

(1) unless application therefore is submitted to the Secretary in accordance with regulations and procedures prescribed by him;

(2) unless the application is in accordance with the comprehensive statewide historic preservation plan which has been approved by the Secretary after considering its relationship to the comprehensive statewide outdoor recreation plan prepared pursuant to the Land and Water Conservation Fund Act of 1965 (78 Stat. 897);

(3) for more than 50 per centum of the aggregate cost of carrying out projects and programs specified in section 101(d) (1) and (2) in any one fiscal year, except that for the costs of State or local historic surveys or inventories the Secretary shall provide 70 per centum of the aggregate cost involved in any one fiscal year;

(4) unless the grantee has agreed to make such reports, in such form and containing such information as the Secretary may from time to time require;

(5) unless the grantee has agreed to assume, after completion of the project, the total cost of the continued maintenance, repair, and administration of the property in a manner satisfactory to the Secretary; and

(6) until the grantee has complied with such further terms and conditions as the Secretary may deem necessary or advisable.

Except as permitted by other law, the State share of the costs referred to in paragraph (3) shall be contributed by non-Federal sources. Notwithstanding any other provision of law, no grant made pursuant to this Act shall be treated as taxable income for purposes of the Internal Revenue Code 1954.

(b) The Secretary may in his discretion waive the requirements of subsection (a), paragraphs (2) and (5) of this section for any grant under this Act to the National Trust for Historic Preservation in the United States, in which case a grant to the National Trust may include funds for the maintenance, repair, and administration of the property in a manner satisfactory to the Secretary.

(c) No State shall be permitted to utilize the value of real property obtained before the date of approval of this Act in meeting the remaining cost of a project for which a grant is made under this Act.

Section 103

Apportionment of survey and planning grants

(a) The amounts appropriated and made available for grants to the States for comprehensive statewide historic surveys and plans under this Act shall be apportioned among the States by the Secretary on the basis of needs as determined by him.

Apportionment of project and program grants

(b) The amounts appropriated and made available for grants to the States for projects and programs under this Act for each fiscal year shall be apportioned among the States by the Secretary in accordance with needs as disclosed in approved statewide historic preservation plans. The Secretary shall notify each State of its apportionment under this subsection within thirty days following the date of enactment of legislation appropriating funds under this Act. Any amount of any apportionment that has not been paid or obligated by the Secretary during the fiscal year in which such notification is given and for two fiscal years thereafter, shall be reapportioned by the Secretary in accordance with this subsection.

Apportionment to certified local governments

(c) A minimum of 10 per centum of the annual apportionment distributed by the Secretary to each State for the purposes of carrying out this Act shall be transferred by the State, pursuant to the requirements of this Act, to local governments which are certified under section 101(c) for historic preservation projects or programs of such local governments. In any year in which the total annual apportionment to the States exceeds \$65,000,000, one half of the excess shall also be transferred by the States to local governments certified pursuant to section 101(c).

Guidelines for apportionment to local governments

(d) The Secretary shall establish guidelines for the use and distribution of funds under subsection (c) to insure that no local government receives a disproportionate share of the funds available, and may include a maximum or minimum limitation on the amount of funds distributed to any single local government. The guidelines shall not limit the ability of any State to distribute more than 10 per centum of its annual apportionment under subsection (c), nor shall the Secretary require any State to exceed the 10 per centum minimum distribution to local governments.

Section 104

Insured loans for National Register properties

(a) The Secretary shall establish and maintain a program by which he may, upon application of a private lender, insure loans (including loans made in accordance with a mortgage) made by such lender to finance any project for the preservation of a property included on the National Register.

Requirements

(b) A loan may be insured under this section only if—

(1) the loan is made by a private lender approved by the Secretary as financially sound and able to service the loan properly;

(2) the amount of the loan, and interest rate charged with respect to the loan, do not exceed such amount, and such a rate, as is established by the Secretary, by rule;

(3) the Secretary has consulted the appropriate State Historic Preservation Officer concerning the preservation of the historic property;

(4) the Secretary has determined that the loan is adequately secured and there is reasonable assurance of repayment;

(5) the repayment period of the loan does not exceed the lesser of forty years or the expected life of the asset financed;

(6) the amount insured with respect to such loan does not exceed 90 per centum of the loss sustained by the lender with respect to the loan; and

(7) the loan, the borrower, and the historic property to be preserved meet other terms and conditions as may be prescribed by the Secretary, by rule, especially terms and conditions relating to the nature and quality of the preservation work.

Interest rates

The Secretary shall consult with the Secretary of the Treasury regarding the interest rate of loans insured under this section.

Limitation on loan authority

(c) The aggregate unpaid principal balance of loans insured under this section and outstanding at any one time may not exceed the amount which has been covered into the Historic Preservation Fund pursuant to section 108 and subsection (g) and (i) of this section, as in effect on the date of the enactment of the Act but which has not been appropriated for any purpose.

Assignability and effect

(d) Any contract of insurance executed by the Secretary under this section may be assignable, shall be an obligation supported by the full faith and credit of the United States, and shall be incontestable except for fraud or misrepresentation of which the holder had actual knowledge at the time it became a holder.

Method of payment for losses

(e) The Secretary shall specify, by rule and in each contract entered into under this section, the conditions and method of payment to a private lender as a result of losses incurred by the lender on any loan insured under this section.

Protection of Government's financial interests; foreclosure

(f) In entering into any contract to insure a loan under this section, the Secretary shall take steps to assure adequate protection of the financial interests of the Federal Government. The Secretary may—

(1) in connection with any foreclosure proceeding, obtain, on behalf of the Federal Government, the property securing a loan insured under this title; and

(2) operate or lease such property for such period as may be necessary to protect the interest of the Federal Government and to carry out subsection (g).

Conveyance of foreclosed property

(g)(1) In any case in which a historic property is obtained pursuant to subsection (f), the Secretary shall attempt to convey such property to any governmental or nongovernmental entity under such conditions as will ensure the property's continued preservation and use; except that if, after a reasonable time, the Secretary, in consultation with the Advisory Council on Historic Preservation, determines that there is no feasible and prudent means to convey such property and to ensure its continued preservation and use, then the Secretary may convey the property at the fair market value of its interest in such property to any entity without restriction.

(2) Any funds obtained by the Secretary in connection with the conveyance of any property pursuant to paragraph (1) shall be covered into the historic preservation fund, in addition to the amounts covered into such fund pursuant to section 108 and subsection (i) of this section, and shall remain available in such fund until appropriated by the Congress to carry out the purposes of this Act.

Fees

(h) The Secretary may assess appropriate and reasonable fees in connection with insuring loans under this section. Any such fees shall be covered into the Historic Preservation Fund, in addition to the amounts covered into such fund pursuant to section 108 and subsection (g) of this section, and shall remain available in such fund until appropriated by the Congress to carry out the purposes of this Act.

Loans to be considered non-Federal funds

(i) Notwithstanding any other provision of law, any loan insured under this section shall be treated as non-Federal funds for the purposes of satisfying any requirement of any other provision of law under which Federal funds to be used for any project or activity are conditioned upon the use of non-Federal funds by the recipient for payment of any portion of the costs of such project or activity.

Appropriation authorization

(j) Effective after the fiscal year 1981 there are authorized to be appropriated, such sums as may be necessary to cover payments incurred pursuant to subsection (e).

Prohibition against acquisition by Federal Financing Bank

(k) No debt obligation which is made or committed to be made, or which is insured or committed to be insured, by the Secretary under this section shall be eligible for purchase by, or commitment to purchase by, or sale or issuance to, the Federal Financing Bank.

Section 105

Recordkeeping

The beneficiary of assistance under this Act shall keep such records as the Secretary shall prescribe, including records which fully disclose the disposition by the beneficiary of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount and nature of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

Section 106

*Advisory Council on Historic Preservation,
comment on Federal undertakings*

The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under Title II of this Act a reasonable opportunity to comment with regard to such undertaking.

Section 107

*Exemption of White House, Supreme
Court, and Capitol*

Nothing in this Act shall be construed to be applicable to the White House and its grounds, the Supreme Court building and its grounds, or the United States Capitol and its related buildings and grounds.

Section 108

*Establishment of Historic Preservation
Fund; authorization for appropriations*

To carry out the provisions of this Act, there is hereby established the Historic Preservation Fund (hereafter referred to as the "fund") in the Treasury of the United States.

There shall be covered into such fund \$24,400,000 for fiscal year 1977, \$100,000,000 for fiscal year 1978, \$100,000,000 for fiscal year 1979, \$150,000,000 for fiscal year 1980, \$150,000,000 for fiscal year 1981, and \$150,000,000 for each of fiscal years 1982 through 1987, from revenues due and payable to the United States under the Outer Continental Shelf Lands Act (67 Stat. 462, 469) as amended (43 U.S.C. 338) and/or under the Act of June 4, 1920 (41 Stat. 813) as amended (30 U.S.C. 191), notwithstanding any provision of law that such proceeds shall be credited to miscellaneous receipts of the Treasury. Such moneys shall be used only to carry out the purposes of this Act and shall be available for expenditure only when appropriated by the Congress. Any moneys not appropriated shall remain available in the fund until appropriated for said purposes: Provided, that appropriations made pursuant to this paragraph may be made without fiscal year limitation.

Section 109

Donations to the Secretary

(a) In furtherance of the purposes of sections of this Act, the Secretary may accept the donation of funds which may be expended by him for projects to acquire, restore, preserve, or recover data from any district, building, structure, site, or object which is listed on the National Register of Historic Places established pursuant to section 101 of this Act, so long as the project is owned by a State, any unit of local government, or any nonprofit entity.

Expenditure of donated funds

(b) In expending said funds, the Secretary shall give due consideration to the following factors: the national significance of the project; its historical value to the community; the imminence of its destruction or loss; and the expressed intentions of the donor. Funds expended under this subsection shall be made available without regard to the matching requirements established by section 102 of this Act, but the recipient of such funds shall be permitted to utilize them to match any grants from the Historic Preservation Fund established by section 108 of this Act.

*Transfer of funds donated for the National
Park Service*

(c) The Secretary is hereby authorized to transfer unobligated funds previously donated to the Secretary for purposes of the National Park Service, with the consent of the donor, and any funds so transferred shall be used or expended in accordance with the provisions of this Act.

Section 110

Federal agencies' responsibility to preserve and use historic buildings

(a)(1) The heads of all Federal agencies shall assume responsibility for the preservation of historic properties which are owned or controlled by such agency. Prior to acquiring, constructing, or leasing buildings for purposes of carrying out agency responsibilities, each Federal agency shall use, to the maximum extent feasible, historic properties available to the agency. Each agency shall undertake, consistent with the preservation of such properties and the mission of the agency and the professional standards established pursuant to section 101(f), any preservation, as may be necessary to carry out this section.

Protection and nomination to the National Register of Federal properties

(2) With the advice of the Secretary and in cooperation with the State Historic Preservation Officer for the State involved, each Federal agency shall establish a program to locate, inventory, and nominate to the Secretary all properties under the agency's ownership or control by the agency, that appear to qualify for inclusion on the National Register in accordance with the regulations promulgated under section 101(a)(2)(A). Each Federal agency shall exercise caution to assure that any such property that might qualify for inclusion is not inadvertently transferred, sold, demolished, substantially altered, or allowed to deteriorate significantly.

Recordation of historic properties prior to demolition

(b) Each Federal agency shall initiate measures to assure that where, as a result of Federal action or assistance carried out by such agency, an historic property is to be substantially altered or demolished, timely steps are taken to make or have made appropriate records, and that such records then be deposited, in accordance with section 101(a), in the Library of Congress or with such other appropriate agency as may be designated by the Secretary, for future use and reference.

Designation of Federal agency preservation officers

(c) The head of each Federal agency shall, unless exempted under section 214, designate a qualified official to be known as the agency's "preservation officer" who shall be responsible for coordinating that agency's activities under this Act. Each Preservation Officer may, in order to be considered qualified, satisfactorily complete an appropriate training program established by the Secretary under section 101(g).

Conduct of agency programs consistent with Act

(d) Consistent with the agency's mission and mandates, all Federal agencies shall carry out agency programs and projects (including those under which any Federal assistance is provided or any Federal license, permit, or other approval is required) in accordance with the purposes of this Act and, give consideration to programs and projects which will further the purposes of this Act.

Transfer of surplus Federal historic properties

(e) The Secretary shall review and approve the plans of transferees of surplus federally owned historic properties not later than ninety days after his receipt of such plans to ensure that the prehistorical, historical, architectural, or culturally significant values will be preserved or enhanced.

Federal undertakings affecting National Historic Landmarks

(f) Prior to the approval of any Federal undertaking which may directly and adversely affect any National Historic Landmark, the head of the responsible Federal agency shall, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to such landmark, and shall afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking.

Preservation activities as an eligible project cost

(g) Each Federal agency may include the costs of preservation activities of such agency under this Act as eligible project costs in all undertakings of such agency or assisted by such agency. The eligible project costs may also include amounts paid by a Federal agency to any State to be used in carrying out such preservation responsibilities of the Federal agency under this Act, and reasonable costs may be charged to Federal licensees and permittees as a condition to the issuance of such license or permit.

Preservation awards program

(h) The Secretary shall establish an annual preservation awards program under which he may make monetary awards in amounts not to exceed \$1,000 and provide citations for special achievements to officers and employees of Federal, State, and certified local governments in recognition of their outstanding contributions to the preservation of historic resources. Such program may include the issuance of annual awards by the President of the United States to any citizen of the United States recommended for such award by the Secretary.

(i) Nothing in this Act shall be construed to require the preparation of an environmental impact statement where such a statement would not otherwise be required under the National Environmental Policy Act of 1969, and nothing in this Act shall be construed to provide any exemption from any requirement respecting the preparation of such a statement under such Act.

(j) The Secretary shall promulgate regulations under which the requirements of this section may be waived in whole or in part in the event of a major natural disaster or an imminent threat to the national security.

Section 111

*Leases or exchanges of Federal historic
properties*

(a) Notwithstanding any other provision of law, any Federal agency may, after consultation with the Advisory Council on Historic Preservation, lease an historic property owned by the agency to any person or organization, or exchange any property owned by the agency with comparable historic property, if the agency head determines that the lease or exchange will adequately insure the preservation of the historic property.

Use of proceeds

(b) The proceeds of any lease under subsection (a) may, notwithstanding any other provision of law, be retained by the agency entering into such lease and used to defray the costs of administration, maintenance, repair, and related expenses incurred by the agency with respect to such property or other properties which are on the National Register which are owned by, or are under the jurisdiction or control of, such agency. Any surplus proceeds from such leases shall be deposited into the Treasury of the United States at the end of the second fiscal year following the fiscal year in which such proceeds were received.

Management contracts

(c) The head of any Federal agency having responsibility for the management of any historic property may, after consultation with the Advisory Council on Historic Preservation, enter into contracts for the management of such property. Any such contract shall contain such terms and conditions as the head of such agency deems necessary or appropriate to protect the interests of the United States and insure adequate preservation of historic property.

TITLE II

Section 201

Advisory Council on Historic Preservation; membership

(a) There is established an Advisory Council on Historic Preservation (hereinafter referred to as the "Council") which shall be composed of the following members:

(1) a Chairman appointed by the President selected from the general public;

(2) the Secretary of the Interior;

(3) the Architect of the Capitol;

(4) the Secretary of Agriculture and the heads of four other agencies of the United States (other than the Department of the Interior), the activities of which affect historic preservation, appointed by the President;

(5) one Governor appointed by the President;

(6) one mayor appointed by the President;

(7) the President of the National Conference of State Historic Preservation Officers;

(8) the Chairman of the National Trust for Historic Preservation;

(9) four experts in the field of historic preservation appointed by the President from the disciplines of architecture, history, archeology, and other appropriate disciplines; and,

(10) three at-large members from the general public, appointed by the President.

Designees

(b) Each member of the Council specified in paragraphs (2) through (8) (other than (5) and (6)) may designate another officer of his department, agency, or organization to serve on the Council in his stead, except that, in the case of paragraphs (2) and (4), no such officer other than an Assistant Secretary or an officer having major department-wide or agency-wide responsibilities may be so designated.

Term of office

(c) Each member of the Council appointed under paragraph (1), and under paragraphs (9) and (10) of subsection (a) shall serve for a term of four years from the expiration of his predecessor's term; except that the members first appointed under that paragraph shall serve for terms of one to four years, as designated by the President at the time of appointment, in such manner as to insure that the terms of not more than two of them will expire in any one year. The members appointed under paragraphs (5) and (6) shall serve for the term of their elected office but not in excess of four years. An appointed member whose term has expired shall serve until that member's successor has been appointed.

Vacancies

(d) A vacancy in the Council shall not affect its powers, but shall be filled not later than sixty days after such vacancy commences, in the same manner as the original appointment (and for the balance of any unexpired terms). The members of the Advisory Council on Historic Preservation appointed by the President under this Act as in effect on the day before the enactment of the National Historic Preservation Act Amendments of 1980 shall remain in office until all members of the Council, as specified in this section, have been appointed. The members first appointed under this section shall be appointed not later than one hundred and eighty days after the enactment of the National Historic Preservation Act Amendments of 1980.

Vice Chairman

(e) The President shall designate a Vice Chairman, from the members appointed under paragraphs (5), (6), (9), or (10). The Vice Chairman may act in place of the Chairman during the absence or disability of the Chairman or when the office is vacant.

Quorum

(f) Nine members of the Council shall constitute a quorum.

Section 202

Duties of Council

(a) The Council shall—

(1) advise the President and the Congress on matters relating to historic preservation, recommend measures to coordinate activities of Federal, State, and local agencies and private institutions and individuals relating to historic preservation; and advise on the dissemination of information pertaining to such activities;

(2) encourage, in cooperation with the National Trust for Historic Preservation and appropriate private agencies, public interest and participation in historic preservation;

(3) recommend the conduct of studies in such areas as the adequacy of legislative and administrative statutes and regulations pertaining to historic preservation activities of State and local governments and the effects of tax policies at all levels of government on historic preservation;

(4) advise as to guidelines for the assistance of State and local governments in drafting legislation relating to historic preservation;

(5) encourage, in cooperation with appropriate public and private agencies and institutions, training and education in the field of historic preservation;

(6) review the policies and programs of Federal agencies and recommend to such agencies methods to improve the effectiveness, coordination, and consistency of those policies and programs with the policies and programs carried out under this Act; and,

(7) inform and educate Federal agencies, State and local governments, Indian tribes, other nations and international organizations and private groups and individuals as to the Council's authorized activities.

Annual and special reports

(b) The Council shall submit annually a comprehensive report of its activities and the results of its studies to the President and the Congress and shall from time to time submit such additional and special reports as it deems advisable. Each report shall propose such legislative enactments and other actions as, in the judgment of the Council, are necessary and appropriate to carry out its recommendations and shall provide the Council's assessment of current and emerging problems in the field of historic preservation and an evaluation of the effectiveness of the programs of Federal agencies, State and local governments, and the private sector in carrying out the purposes of this Act.

Section 203

Information from agencies

The Council is authorized to secure directly from any department, bureau, agency, board, commission, office, independent establishment or instrumentality of the executive branch of the Federal Government information, suggestions, estimates, and statistics for the purpose of this title; and each such department or instrumentality is authorized to furnish such information, suggestions, estimates, and statistics to the extent permitted by law and within available funds.

Section 204

Compensation of members

The members of the Council specified in paragraphs (2), (3), and (4) of section 201(a) shall serve without additional compensation. The other members of the Council shall receive \$100 per diem when engaged in the performances of the duties of the Council. All members of the Council shall receive reimbursement for necessary traveling and subsistence expenses incurred by them in the performance of the duties of the Council.

Section 205

Executive Director

(a) There shall be an Executive Director of the Council who shall be appointed in the competitive service by the Chairman with the concurrence of the Council. The Executive Director shall report directly to the Council and perform such functions and duties as the Council may prescribe.

General Counsel and attorneys

(b) The Council shall have a General Counsel, who shall be appointed by the Executive Director. The General Counsel shall report directly to the Executive Director and serve as the Council's legal advisor. The Executive Director shall appoint such other attorneys as may be necessary to assist the General Counsel, represent the Council in courts of law whenever appropriate, including enforcement of agreements with Federal agencies to which the Council is a party, assist the Department of Justice in handling litigation concerning the Council in courts of law, and perform such other legal duties and functions as the Executive Director and the Council may direct.

Appointment and compensation of staff

(c) The Executive Director of the Council may appoint and fix the compensation of such officers and employees in the competitive service as are necessary to perform the functions of the Council at rates not to exceed that now or hereafter prescribed for the highest rate for grade 15 of the General Schedule under section 5332 of title 5, United States Code: *Provided, however,* That the Executive Director, with the concurrence of the Chairman, may appoint and fix the compensation of not to exceed five employees in the competitive service at rates not to exceed that now or hereafter prescribed for the highest rate of grade 17 of the General Schedule under section 5332 of Title 5, United States Code.

Appointment and compensation of additional personnel

(d) The Executive Director shall have power to appoint and fix the compensation of such additional personnel as may be necessary to carry out its duties, without regard to the provisions of the civil service laws and the Classification Act of 1949.

Consultants

(e) The Executive Director of the Council is authorized to procure expert and consultant services in accordance with the provisions of section 3109 of title 5, United States Code.

Financial and administrative services

(f) Financial and administrative services (including those related to budgeting, accounting, financial reporting, personnel and procurement) shall be provided the Council by the Department of the Interior, for which payments shall be made in advance, or by reimbursement, from funds of the Council in such amounts as may be agreed upon by the Chairman of the Council and the Secretary of the Interior; *Provided, That* the regulations of the Department of the Interior for the collection of indebtedness of personnel resulting from erroneous payments (5 U.S.C. 46e) shall apply to the collection of erroneous payments made to or on behalf of a Council employee, and regulations of said Secretary for the administrative control of funds (31 U.S.C. 665(g)) shall apply to appropriations of the Council: *And provided further,* That the Council shall not be required to prescribe such regulations.

Provision of assistance by members

(g) The members of the Council specified in paragraphs (2) through (4) of section 201(a) shall provide the Council, with or without reimbursement as may be agreed upon by the Chairman and the members, with such funds, personnel, facilities, and services under their jurisdiction and control as may be needed by the Council to carry out its duties, to the extent that such funds, personnel, facilities, and services are requested by the Council and are otherwise available for that purpose. To the extent of available appropriations, the Council may obtain, by purchase, rental, donation, or otherwise, such additional property, facilities, and services as may be needed to carry out its duties and may also receive donations of moneys for such purpose, and the Executive Director is authorized, in his discretion, to accept, hold, use, expend, and administer the same for the purposes of this Act.

International Centre for the Study of the Preservation and Restoration of Cultural Property; authorization

Members of official delegation

Authorization for membership payment

Transfer of funds

Rights of Council employees

Exemption from Federal Advisory Committee Act

Submission to the Congress

Regulations for Section 106; local government participation

Section 206

(a) The participation of the United States as a member of the International Centre for the Study of the Preservation and Restoration of Cultural Property is hereby authorized.

(b) The Council shall recommend to the Secretary of State, after consultation with the Smithsonian Institution and other public and private organizations concerned with the technical problems of preservation, the members of the official delegation which will participate in the activities of the Centre on behalf of the United States. The Secretary of State shall appoint the members of the official delegation from the persons recommended to him by the Council.

(c) For the purposes of this section there is authorized to be appropriated an amount equal to the assessment for United States membership in the Centre for fiscal years 1979, 1980, 1981, and 1982: *Provided*, That no appropriation is authorized and no payment shall be made to the Centre in excess of 25 per centum of the total annual assessment of such organization. Authorization for payment of such assessment shall begin in fiscal year 1981, but shall include earlier costs.

Section 207

So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, held, used, programmed, or available or to be made available by the Department of the Interior in connection with the functions of the Council, as the Director of the Office of Management and Budget shall determine, shall be transferred from the Department to the Council within 60 days of the effective date of this Act.

Section 208

Any employee in the competitive service of the United States transferred to the Council under the provisions of this section shall retain all rights, benefits, and privileges pertaining thereto held prior to such transfer.

Section 209

The Council is exempt from the provisions of the Federal Advisory Committee Act (86 Stat. 770), and the provisions of the Administrative Procedure Act (80 Stat. 381) shall govern the operations of the Council.

Section 210

No officer or agency of the United States shall have any authority to require the Council to submit its legislative recommendations, or testimony, or comments on legislation to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress. In instances in which the Council voluntarily seeks to obtain the comments or review of any officer or agency of the United States, the Council shall include a description of such actions in its legislative recommendations, testimony, or comments on legislation which it transmits to the Congress.

Section 211

The Council is authorized to promulgate such rules and regulations it deems necessary to govern the implementation of section 106 of this Act. The Council shall, by regulation, establish such procedures as may be necessary to provide for participation by local governments in proceedings and other actions taken by the Council with respect to undertakings referred to in section 106 which affect such local governments.

Section 212

Council appropriation authorization

(a) The Council shall submit its budget annually as a related agency of the Department of the Interior. To carry out the provisions of this title, there are authorized to be appropriated not more than \$1,500,000 in fiscal year 1977, \$1,750,000 in fiscal year 1978, and \$2,000,000 in fiscal year 1979. There are authorized to be appropriated not to exceed \$2,250,000 in fiscal year 1980, \$2,500,000 in fiscal year 1981, \$2,500,000 in fiscal year 1982, and \$2,500,000 in fiscal year 1983.

Concurrent submission of budget to Congress

(b) Whenever the Council submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit copies of that estimate or request to the House and Senate Appropriations Committees and the House Committee on Interior and Insular Affairs and the Senate Committee on Energy and Natural Resources.

Section 213

Reports from Secretary at request of Council

To assist the Council in discharging its responsibilities under this Act, the Secretary at the request of the Chairman, shall provide a report to the Council detailing the significance of any historic property, describing the effects of any proposed undertaking on the affected property, and recommending measures to avoid, minimize, or mitigate adverse effects.

Section 214

Exemptions for Federal activities from provisions of the Act

The Council, with the concurrence of the Secretary, shall promulgate regulations or guidelines, as appropriate, under which Federal programs or undertakings may be exempted from any or all of the requirements of this Act when such exemption is determined to be consistent with the purposes of this Act, taking into consideration the magnitude of the exempted undertaking or program and the likelihood of impairment of historic properties.

TITLE III

Section 301

Definitions

As used in this Act, the term—

(1) "Agency" means agency as such term is defined in section 551 of title 5, United States Code, except that in the case of any Federal program exempted under section 214, the agency administering such program shall not be treated as an agency with respect to such program.

(2) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territories of the Pacific Islands.

(3) "Local government" means a city, county, parish, township, municipality, borough, or any other general purpose political subdivision of any State.

(4) "Indian tribe" means the governing body of any Indian tribe, band, nation, or other group which is recognized as an Indian tribe by the Secretary of the Interior for which the United States holds land in trust or restricted status for the entity or its members. Such term also includes any Native village corporation, regional corporation, and Native Group established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1701 et seq.).

(5) "Historic property" or "historic resource" means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion on the National Register; such term includes artifacts, records, and remains which are related to such a district, site, building, structure, or object.

(6) "National Register" or "Register" means the National Register of Historic Places established under section 101.

(7) "Undertaking" means any action as described in section 106.

(8) "Preservation" or "historic preservation" includes identification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance and reconstruction, or any combination of the foregoing activities.

(9) "Cultural park" means a definable urban area which is distinguished by historic resources and land related to such resources and which constitutes an interpretive, educational, and recreational resource for the public at large.

(10) "Historic conservation district" means an urban area of one or more neighborhoods and which contains (A) historic properties, (B) buildings having similar or related architectural characteristics, (C) cultural cohesiveness, or (D) any combination of the foregoing.

(11) "Secretary" means the Secretary of the Interior except where otherwise specified.

(12) "State Historic Preservation Review Board" means a board, council, commission, or other similar collegial body established as provided in section 101(b)(1)(B)—

(A) the members of which are appointed by the State Historic Preservation Officer (unless otherwise provided for by State law),

(B) a majority of the members of which are professionals qualified in the following and related disciplines: history, prehistoric and historic archeology, architectural history, and architecture, and

(C) which has the authority to—

(i) review National Register nominations and appeals from nominations;

(ii) review appropriate documentation submitted in conjunction with the Historic Preservation Fund;

(iii) provide general advice and guidance to the State Historic Preservation Officer, and

(iv) perform such other duties as may be appropriate.

(13) "Historic preservation review commission" means a board, council, commission, or other similar collegial body which is established by State or local legislation as provided in section 101(c)(1)(B), and the members of which are appointed, unless otherwise provided by State or local legislation, by the chief elected official of the jurisdiction concerned from among—

(A) professionals in the disciplines of architecture, history, architectural history, planning, archeology, or related disciplines, to the extent such professionals are available in the community concerned, and

(B) such other persons as have demonstrated special interest, experience, or knowledge in history, architecture, or related disciplines and as will provide for an adequate and qualified commission.

Section 302

Authority to expend funds for purposes of this Act

Where appropriate, each Federal agency is authorized to expend funds appropriated for its authorized programs for the purposes of activities carried out pursuant to this Act, except to the extent appropriations legislation expressly provides otherwise.

Section 303

Donations to Secretary; money and personal property

(a) The Secretary is authorized to accept donations and bequests of money and personal property for the purposes of this Act and shall hold, use, expend, and administer the same for such purposes.

Donations of less than fee interests in real property

(b) The Secretary is authorized to accept gifts or donations of less than fee interests in any historic property where the acceptance of such interests will facilitate the conservation or preservation of such properties. Nothing in this section or in any provision of this Act shall be construed to affect or impair any other authority of the Secretary under other provision of law to accept or acquire any property for conservation or preservation or for any other purpose.

Section 304

Confidentiality of the location of sensitive historic resources

The head of any Federal agency, after consultation with the Secretary, shall withhold from disclosure to the public, information relating to the location or character of historic resources whenever the head of the agency or the Secretary determines that the disclosure of such information may create a substantial risk of harm, theft, or destruction to such resources or to the area or place where such resources are located.

Section 305

Attorneys' fees

In any civil action brought in any United States district court by any interested person to enforce the provisions of this Act, if such person substantially prevails in such action, the court may award attorneys' fees, expert witness fees, and other costs of participating in such action, as the court deems reasonable.

National Center for the Building Arts

(a) In order to provide a national center to commemorate and encourage the building arts and to preserve and maintain a nationally significant building which exemplifies the great achievements of the building arts in the United States, the Secretary and the Administrator of the General Services Administration are authorized and directed to enter into a cooperative agreement with the Committee for a National Museum of the Building Arts, Incorporated, a nonprofit corporation organized and existing under the laws of the District of Columbia, or its successor, for the operation of a National Museum for the Building Arts in the Federal Building located in the block bounded by Fourth Street, Fifth Street, F Street, and G Street, Northwest in Washington, District of Columbia. Such museum shall—

(1) collect and disseminate information concerning the building arts, including the establishment of a national reference center for current and historic documents, publications, and research relating to the building arts;

(2) foster educational programs relating to the history, practice and contribution to society of the building arts, including promotion of imaginative educational approaches to enhance understanding and appreciation of all facets of the building arts;

(3) publicly display temporary and permanent exhibits illustrating, interpreting and demonstrating the building arts;

(4) sponsor or conduct research and study into the history of the building arts and their role in shaping our civilization; and

(5) encourage contributions to the building arts.

Cooperative agreement

(b) The cooperative agreement referred to in subsection (a) shall include provisions which—

(1) make the site available to the Committee referred to in subsection (a) without charge;

(2) provide, subject to available appropriations, such maintenance, security, information, janitorial and other services as may be necessary to assure the preservation and operation of the site; and

(3) prescribe reasonable terms and conditions by which the Committee can fulfill its responsibilities under this Act.

Grants to Committee

(c) The Secretary is authorized and directed to provide matching grants-in-aid to the Committee referred to in subsection (a) for its programs related to historic preservation. The Committee shall match such grants-in-aid in a manner and with such funds and services as shall be satisfactory to the Secretary, except that no more than \$500,000 may be provided to the Committee in any one fiscal year.

Site renovation

(d) The renovation of the site shall be carried out by the Administrator with the advice of the Secretary. Such renovation shall, as far as practicable—

(1) be commenced immediately,

(2) preserve, enhance, and restore the distinctive and historically authentic architectural character of the site consistent with the needs of a national museum of the building arts and other compatible use, and

(3) retain the availability of the central court of the building, or portions thereof, for appropriate public activities.

Annual report

(e) The Committee shall submit an annual report to the Secretary and the Administrator concerning its activities under this section and shall provide the Secretary and the Administrator with such other information as the Secretary may, from time to time, deem necessary or advisable.

Definition of "building arts"

(f) For purposes of this section, the term "building arts" includes, but shall not be limited to, all practical and scholarly aspects of prehistoric, historic, and contemporary architecture, archeology, construction, building technology and skills, landscape architecture, preservation and conservation, building and construction, engineering, urban and community design and renewal, city and regional planning, and related professions, skills, trades and crafts.

Section 307

Transmittal of regulations to Congressional committees

(a) At least thirty days prior to publishing in the Federal Register any proposed regulation required by this Act, the Secretary shall transmit a copy of the regulation to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate. The Secretary also shall transmit to such committees a copy of any final regulation prior to its publication in the Federal Register. Except as provided in subsection (b) of this section, no final regulation of the Secretary shall become effective prior to the expiration of thirty calendar days after it is published in the Federal Register during which either or both Houses of Congress are in session.

Emergency regulations

(b) In the case of an emergency, a final regulation of the Secretary may become effective without regard to the last sentence of subsection (a) if the Secretary notified in writing the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate setting forth the reasons why it is necessary to make the regulation effective prior to the expiration of the thirty-day period.

Disapproval by Congress

(c) Except as provided in subsection (b), the regulation shall not become effective if, within ninety calendar days of continuous session of Congress after the date of promulgation, both Houses of Congress adopt a concurrent resolution, the matter after the resolving clause of which is as follows: "That Congress disapproves the regulation promulgated by the Secretary dealing with the matter of _____, which regulation was transmitted to Congress on _____," the blank spaces therein being appropriately filled.

Inaction by Congress

(d) If at the end of sixty calendar days of continuous session of Congress after the date of promulgation of a regulation, no committee of either House of Congress has reported or been discharged from further consideration of a concurrent resolution disapproving the regulation, and neither House has adopted such a resolution, the regulation may go into effect immediately. If, within such sixty calendar days, such a committee has reported or been discharged from further consideration of such a resolution, the regulation may go into effect not sooner than ninety calendar days of continuous session of Congress after its promulgation unless disapproved as provided for.

Definitions

(e) For the purposes of this section—

(1) continuity of session is broken only by an adjournment sine die; and

(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of sixty and ninety calendar days of continuous session of Congress.

Effect of Congressional inaction

(f) Congressional inaction on or rejection of a resolution of disapproval shall not be deemed an expression of approval of such regulation.

JUL 28 1978

Ninety-fifth Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Thursday, the nineteenth day of January,
one thousand nine hundred and seventy-eight*

Joint Resolution

American Indian Religious Freedom

Whereas the freedom of religion for all people is an inherent right, fundamental to the democratic structure of the United States and is guaranteed by the First Amendment of the United States Constitution:

Whereas the United States has traditionally rejected the concept of a government denying individuals the right to practice their religion and, as a result, has benefited from a rich variety of religious heritages in this country;

Whereas the religious practices of the American Indian (as well as Native Alaskan and Hawaiian) are an integral part of their culture, tradition and heritage, such practices forming the basis of Indian identity and value systems;

Whereas the traditional American Indian religions, as an integral part of Indian life, are indispensable and irreplaceable;

Whereas the lack of a clear, comprehensive, and consistent Federal policy has often resulted in the abridgment of religious freedom for traditional American Indians;

Whereas such religious infringements result from the lack of knowledge or the insensitive and inflexible enforcement of Federal policies and regulations premised on a variety of laws;

Whereas such laws were designed for such worthwhile purposes as conservation and preservation of natural species and resources but were never intended to relate to Indian religious practices and, therefore, were passed without consideration of their effect on traditional American Indian religions;

Whereas such laws and policies often deny American Indians access to sacred sites required in their religions, including cemeteries;

Whereas such laws at times prohibit the use and possession of sacred objects necessary to the exercise of religious rites and ceremonies;

Whereas traditional American Indian ceremonies have been intruded upon, interfered with, and in a few instances banned: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That henceforth it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites.

SEC. 2. The President shall direct the various Federal departments, agencies, and other instrumentalities responsible for administering relevant laws to evaluate their policies and procedures in consultation with native traditional religious leaders in order to determine appropriate changes necessary to protect and preserve Native American religious cultural rights and practices. Twelve months after approval of this resolution, the President shall report back to the Congress the result of his evaluation, including any changes which were made in administrative policies and procedures, and any recommendations he may have for legislative action.

FOR IMMEDIATE RELEASE

AUGUST 12, 1978

Office of the White House Press Secretary

THE WHITE HOUSE

The President has signed S.J. Res. 102, which declares Federal policy to protect freedom of religious belief and exercise on th part of Native Americans. A report to the Congress is required in twelve months after an Executive Branch evaluation of this issue. The resolution is designed primarily to assure that Fedreal programs (such as Federal land management and customs procedures) are administered to accommodate and be sensitive to traditional native religious beliefs and practices.

The President issued the following statement on S.J. Res. 102:

SIGNING STATEMENT
SENATE JOINT RESOLUTION 102
ON AMERICAN INDIAN RELIGIOUS FREEDOM

I have signed into law S.J. Res. 102, the American Indian Religious Freedom Act of 1978. This legislation sets forth the policy of the United States to protect and preserve the inherent right of American Indian, Eskimo, Aleut, and Native Hawaiian people to believe, express and exercise their traditional religions. In addition, it calls for a year's evaluation of the Federal agencies' policies and procedures as they affect the religious rights and cultural integrity of Native Americans.

It is a fundamental right of every American, as guaranteed by the First Amendment of the Constitution, to worship as he or she pleases. This act is in no way intended to alter that guarantee or override existing laws, but is designed to prevent government actions that would violate these Constitutional protections. In the past government agencies and departments have on occasion denied Native Americans access to partioular sites and interfered with religious practices and customs where such use conflicted with Federal regulations. In many instances, the Federal officials responsible for the enforcement of these regulations were unaware of the nature of traditional native religious practices and, consequently, of the degree to which their agencies interfered with such practices.

This legislation seeks to remedy this situation.

I am hereby directing that the Secretary of the Interior establish a task force comprised of representatives of the appropriate Federal agencies. They will prepare the report to the Congress required by this Resolution, in consultation with Native leaders. Several agencies, including the Departments of Treasury and Interior, have already taken commendable steps to implement the intent of this Resolution.

I welcome enactment of this Resolution as an important action to assure religious freedom for all Americans.

JIMMY CARTER

Public Law 96-95
96th Congress

An Act

To protect archaeological resources on public lands and Indian lands, and for other purposes.

Oct. 31, 1979
[H.R. 1825]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Archaeological
Resources
Protection Act of
1979.

SHORT TITLE

SECTION 1. This Act may be cited as the "Archaeological Resources Protection Act of 1979".

16 USC 470aa
note

FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds that—

16 USC 470aa

(1) archaeological resources on public lands and Indian lands are an accessible and irreplaceable part of the Nation's heritage;

(2) these resources are increasingly endangered because of their commercial attractiveness;

(3) existing Federal laws do not provide adequate protection to prevent the loss and destruction of these archaeological resources and sites resulting from uncontrolled excavations and pillage; and

(4) there is a wealth of archaeological information which has been legally obtained by private individuals for noncommercial purposes and which could voluntarily be made available to professional archaeologists and institutions.

(b) The purpose of this Act is to secure, for the present and future benefit of the American people, the protection of archaeological resources and sites which are on public lands and Indian lands, and to foster increased cooperation and exchange of information between governmental authorities, the professional archaeological community, and private individuals having collections of archaeological resources and data which were obtained before the date of the enactment of this Act.

DEFINITIONS

SEC. 3. As used in this Act—

16 USC 470bb

(1) The term "archaeological resource" means any material remains of past human life or activities which are of archaeological interest, as determined under uniform regulations promulgated pursuant to this Act. Such regulations containing such determination shall include, but not be limited to: pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, human skeletal materials, or any portion or piece of any of the foregoing items. Nonfossilized and fossilized paleontological specimens, or any portion or piece thereof, shall not be considered archaeological resources, under the regulations under this paragraph, unless found in an archaeological

context. No item shall be treated as an archaeological resource under regulations under this paragraph unless such item is at least 100 years of age.

(2) The term "Federal land manager" means, with respect to any public lands, the Secretary of the department, or the head of any other agency or instrumentality of the United States, having primary management authority over such lands. In the case of any public lands or Indian lands with respect to which no department, agency, or instrumentality has primary management authority, such term means the Secretary of the Interior. If the Secretary of the Interior consents, the responsibilities (in whole or in part) under this Act of the Secretary of any department (other than the Department of the Interior) or the head of any other agency or instrumentality may be delegated to the Secretary of the Interior with respect to any land managed by such other Secretary or agency head, and in any such case, the term "Federal land manager" means the Secretary of the Interior.

(3) The term "public lands" means—

(A) lands which are owned and administered by the United States as part of—

- (i) the national park system,
- (ii) the national wildlife refuge system, or
- (iii) the national forest system; and

(B) all other lands the fee title to which is held by the United States, other than lands on the Outer Continental Shelf and lands which are under the jurisdiction of the Smithsonian Institution;

(4) The term "Indian lands" means lands of Indian tribes, or Indian individuals, which are either held in trust by the United States or subject to a restriction against alienation imposed by the United States, except for any subsurface interests in lands not owned or controlled by an Indian tribe or an Indian individual.

(5) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (85 Stat. 688).

(6) The term "person" means an individual, corporation, partnership, trust, institution, association, or any other private entity or any officer, employee, agent, department, or instrumentality of the United States, of any Indian tribe, or of any State or political subdivision thereof.

(7) The term "State" means any of the fifty States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

EXCAVATION AND REMOVAL

SEC. 4. (a) Any person may apply to the Federal land manager for a permit to excavate or remove any archaeological resource located on public lands or Indian lands and to carry out activities associated with such excavation or removal. The application shall be required, under uniform regulations under this Act, to contain such information as the Federal land manager deems necessary, including information concerning the time, scope, and location and specific purpose of the proposed work.

43 USC 1601
note.

Permit
application
16 USC 470cc

(b) A permit may be issued pursuant to an application under subsection (a) if the Federal land manager determines, pursuant to uniform regulations under this Act, that—

(1) the applicant is qualified, to carry out the permitted activity,

(2) the activity is undertaken for the purpose of furthering archaeological knowledge in the public interest,

(3) the archaeological resources which are excavated or removed from public lands will remain the property of the United States, and such resources and copies of associated archaeological records and data will be preserved by a suitable university, museum, or other scientific or educational institution, and

(4) the activity pursuant to such permit is not inconsistent with any management plan applicable to the public lands concerned.

(c) If a permit issued under this section may result in harm to, or destruction of, any religious or cultural site, as determined by the Federal land manager, before issuing such permit, the Federal land manager shall notify any Indian tribe which may consider the site as having religious or cultural importance. Such notice shall not be deemed a disclosure to the public for purposes of section 9.

(d) Any permit under this section shall contain such terms and conditions, pursuant to uniform regulations promulgated under this Act, as the Federal land manager concerned deems necessary to carry out the purposes of this Act.

(e) Each permit under this section shall identify the individual who shall be responsible for carrying out the terms and conditions of the permit and for otherwise complying with this Act and other law applicable to the permitted activity.

(f) Any permit issued under this section may be suspended by the Federal land manager upon his determination that the permittee has violated any provision of subsection (a), (b), or (c) of section 6. Any such permit may be revoked by such Federal land manager upon assessment of a civil penalty under section 7 against the permittee or upon the permittee's conviction under section 6.

(g)(1) No permit shall be required under this section or under the Act of June 8, 1906 (16 U.S.C. 431), for the excavation or removal by any Indian tribe or member thereof of any archaeological resource located on Indian lands of such Indian tribe, except that in the absence of tribal law regulating the excavation or removal of archaeological resources on Indian lands, an individual tribal member shall be required to obtain a permit under this section.

(2) In the case of any permits for the excavation or removal of any archaeological resource located on Indian lands, the permit may be granted only after obtaining the consent of the Indian or Indian tribe owning or having jurisdiction over such lands. The permit shall include such terms and conditions as may be requested by such Indian or Indian tribe.

(h)(1) No permit or other permission shall be required under the Act of June 8, 1906 (16 U.S.C. 431-433), for any activity for which a permit is issued under this section.

(2) Any permit issued under the Act of June 8, 1906, shall remain in effect according to its terms and conditions following the enactment of this Act. No permit under this Act shall be required to carry out any activity under a permit issued under the Act of June 8, 1906, before the date of the enactment of this Act which remains in effect as provided in this paragraph, and nothing in this Act shall modify or affect any such permit.

(i) Issuance of a permit in accordance with this section and applicable regulations shall not require compliance with section 106 of the Act of October 15, 1966 (80 Stat. 917, 16 U.S.C. 470f).

(j) Upon the written request of the Governor of any State, the Federal land manager shall issue a permit, subject to the provisions of subsections (b)(3), (b)(4), (c), (e), (f), (g), (h), and (i) of this section for the purpose of conducting archaeological research, excavation, removal, and curation, on behalf of the State or its educational institutions, to such Governor or to such designee as the Governor deems qualified to carry out the intent of this Act.

CUSTODY OF RESOURCES

Regulations
16 USC 470dd

SEC. 5. The Secretary of the Interior may promulgate regulations providing for—

(1) the exchange, where appropriate, between suitable universities, museums, or other scientific or educational institutions, of archaeological resources removed from public lands and Indian lands pursuant to this Act, and

(2) the ultimate disposition of such resources and other resources removed pursuant to the Act of June 27, 1960 (16 U.S.C. 469–469c) or the Act of June 8, 1906 (16 U.S.C. 431–433).

Any exchange or ultimate disposition under such regulation of archaeological resources excavated or removed from Indian lands shall be subject to the consent of the Indian or Indian tribe which owns or has jurisdiction over such lands. Following promulgation of regulations under this section, notwithstanding any other provision of law, such regulations shall govern the disposition of archaeological resources removed from public lands and Indian lands pursuant to this Act.

PROHIBITED ACTS AND CRIMINAL PENALTIES

16 USC 470ee

SEC. 6. (a) No person may excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public lands or Indian lands unless such activity is pursuant to a permit issued under section 4, a permit referred to in section 4(h)(2), or the exemption contained in section 4(g)(1).

(b) No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange any archaeological resource if such resource was excavated or removed from public lands or Indian lands in violation of—

(1) the prohibition contained in subsection (a), or

(2) any provision, rule, regulation, ordinance, or permit in effect under any other provision of Federal law.

(c) No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange, in interstate or foreign commerce, any archaeological resource excavated, removed, sold, purchased, exchanged, transported, or received in violation of any provision, rule, regulation, ordinance, or permit in effect under State or local law.

(d) Any person who knowingly violates, or counsels, procures, solicits, or employs any other person to violate, any prohibition contained in subsection (a), (b), or (c) of this section shall, upon conviction, be fined not more than \$10,000 or imprisoned not more than one year, or both: *Provided, however,* That if the commercial or archaeological value of the archaeological resources involved and the cost of restoration and repair of such resources exceeds the sum of \$5,000, such person shall be fined not more than \$20,000 or impris-

oned not more than two years, or both. In the case of a second or subsequent such violation upon conviction such person shall be fined not more than \$100,000, or imprisoned not more than five years, or both.

(e) The prohibitions contained in this section shall take effect on the date of the enactment of this Act.

(f) Nothing in subsection (b)(1) of this section shall be deemed applicable to any person with respect to an archaeological resource which was in the lawful possession of such person prior to the date of the enactment of this Act.

(g) Nothing in subsection (d) of this section shall be deemed applicable to any person with respect to the removal of arrowheads located on the surface of the ground.

CIVIL PENALTIES

SEC. 7. (a)(1) Any person who violates any prohibition contained in an applicable regulation or permit issued under this Act may be assessed a civil penalty by the Federal land manager concerned. No penalty may be assessed under this subsection unless such person is given notice and opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. Any such civil penalty may be remitted or mitigated by the Federal land manager concerned. 16 USC 470f

(2) The amount of such penalty shall be determined under regulations promulgated pursuant to this Act, taking into account, in addition to other factors—

(A) the archaeological or commercial value of the archaeological resource involved, and

(B) the cost of restoration and repair of the resource and the archaeological site involved.

Such regulations shall provide that, in the case of a second or subsequent violation by any person, the amount of such civil penalty may be double the amount which would have been assessed if such violation were the first violation by such person. The amount of any penalty assessed under this subsection for any violation shall not exceed an amount equal to double the cost of restoration and repair of resources and archaeological sites damaged and double the fair market value of resources destroyed or not recovered.

(3) No penalty shall be assessed under this section for the removal of arrowheads located on the surface of the ground.

(b)(1) Any person aggrieved by an order assessing a civil penalty under subsection (a) may file a petition for judicial review of such order with the United States District Court for the District of Columbia or for any other district in which such a person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such assessment was issued. The court shall hear such action on the record made before the Federal land manager and shall sustain his action if it is supported by substantial evidence on the record considered as a whole.

(2) If any person fails to pay an assessment of a civil penalty—

(A) after the order making the assessment has become a final order and such person has not filed a petition for judicial review of the order in accordance with paragraph (1), or

(B) after a court in an action brought under paragraph (1) has entered a final judgment upholding the assessment of a civil penalty,

the Federal land managers may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. In such action, the validity and amount of such penalty shall not be subject to review.

Subpenas

Witness fees

(c) Hearings held during proceedings for the assessment of civil penalties authorized by subsection (a) shall be conducted in accordance with section 554 of title 5 of the United States Code. The Federal land manager may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpoena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Federal land manager or to appear and produce documents before the Federal land manager, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

REWARDS; FORFEITURE

16 USC 470gg

SEC. 8. (a) Upon the certification of the Federal land manager concerned, the Secretary of the Treasury is directed to pay from penalties and fines collected under sections 6 and 7 an amount equal to one-half of such penalty or fine, but not to exceed \$500, to any person who furnishes information which leads to the finding of a civil violation, or the conviction of criminal violation, with respect to which such penalty or fine was paid. If several persons provided such information, such amount shall be divided among such persons. No officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall be eligible for payment under this subsection.

(b) All archaeological resources with respect to which a violation of subsection (a), (b), or (c) of section 6 occurred and which are in the possession of any person, and all vehicles and equipment of any person which were used in connection with such violation, may be (in the discretion of the court or administrative law judge, as the case may be) subject to forfeiture to the United States upon—

- (1) such person's conviction of such violation under section 6,
- (2) assessment of a civil penalty against such person under section 7 with respect to such violation, or
- (3) a determination by any court that such archaeological resources, vehicles, or equipment were involved in such violation.

(c) In cases in which a violation of the prohibition contained in subsection (a), (b), or (c) of section 6 involve archaeological resources excavated or removed from Indian lands, the Federal land manager or the court, as the case may be, shall provide for the payment to the Indian or Indian tribe involved of all penalties collected pursuant to section 7 and for the transfer to such Indian or Indian tribe of all items forfeited under this section.

CONFIDENTIALITY

SEC. 9. (a) Information concerning the nature and location of any archaeological resource for which the excavation or removal requires a permit or other permission under this Act or under any other provision of Federal law may not be made available to the public under subchapter II of chapter 5 of title 5 of the United States Code or under any other provision of law unless the Federal land manager concerned determines that such disclosure would—

16 USC 470hh

5 USC 551

(1) further the purposes of this Act or the Act of June 27, 1960 (16 U.S.C. 469-469c), and

(2) not create a risk of harm to such resources or to the site at which such resources are located.

(b) Notwithstanding the provisions of subsection (a), upon the written request of the Governor of any State, which request shall state—

(1) the specific site or area for which information is sought,

(2) the purpose for which such information is sought,

(3) a commitment by the Governor to adequately protect the confidentiality of such information to protect the resource from commercial exploitation,

the Federal land manager concerned shall provide to the Governor information concerning the nature and location of archaeological resources within the State of the requesting Governor.

REGULATIONS; INTERGOVERNMENTAL COORDINATION

SEC. 10. (a) The Secretaries of the Interior, Agriculture and Defense and the Chairman of the Board of the Tennessee Valley Authority, after consultation with other Federal land managers, Indian tribes, representatives of concerned State agencies, and after public notice and hearing, shall promulgate such uniform rules and regulations as may be appropriate to carry out the purposes of this Act. Such rules and regulations may be promulgated only after consideration of the provisions of the American Indian Religious Freedom Act (92 Stat. 469; 42 U.S.C. 1996). Each uniform rule or regulation promulgated under this Act shall be submitted on the same calendar day to the Committee on Energy and Natural Resources of the United States Senate and to the Committee on Interior and Insular Affairs of the United States House of Representatives, and no such uniform rule or regulation may take effect before the expiration of a period of ninety calendar days following the date of its submission to such Committees.

Rules and
regulations
16 USC 470u

Submitted to
congressional
committees

(b) Each Federal land manager shall promulgate such rules and regulations, consistent with the uniform rules and regulations under subsection (a), as may be appropriate for the carrying out of his functions and authorities under this Act.

Rules and
regulations

COOPERATION WITH PRIVATE INDIVIDUALS

SEC. 11. The Secretary of the Interior shall take such action as may be necessary, consistent with the purposes of this Act, to foster and improve the communication, cooperation, and exchange of information between—

16 USC 470jj

(1) private individuals having collections of archaeological resources and data which were obtained before the date of the enactment of this Act, and

(2) Federal authorities responsible for the protection of archaeological resources on the public lands and Indian lands and

professional archaeologists and associations of professional archaeologists.

In carrying out this section, the Secretary shall, to the extent practicable and consistent with the provisions of this Act, make efforts to expand the archaeological data base for the archaeological resources of the United States through increased cooperation between private individuals referred to in paragraph (1) and professional archaeologists and archaeological organizations.

SAVINGS PROVISIONS

16 USC 470kk

SEC. 12. (a) Nothing in this Act shall be construed to repeal, modify, or impose additional restrictions on the activities permitted under existing laws and authorities relating to mining, mineral leasing, reclamation, and other multiple uses of the public lands.

(b) Nothing in this Act applies to, or requires a permit for, the collection for private purposes of any rock, coin, bullet, or mineral which is not an archaeological resource, as determined under uniform regulations promulgated under section 3(1).

(c) Nothing in this Act shall be construed to affect any land other than public land or Indian land or to affect the lawful recovery, collection, or sale of archaeological resources from land other than public land or Indian land.

REPORT

16 USC 470ll

SEC. 13. As part of the annual report required to be submitted to the specified committees of the Congress pursuant to section 5(c) of the Act of June 27, 1960 (74 Stat. 220; 16 U.S.C. 469-469a), the Secretary of the Interior shall comprehensively report as a separate component on the activities carried out under the provisions of this Act, and he shall make such recommendations as he deems appropriate as to changes or improvements needed in the provisions of this Act. Such report shall include a brief summary of the actions undertaken by the Secretary under section 11 of this Act, relating to cooperation with private individuals.

Approved October 31, 1979.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 96-311 (Comm. on Interior and Insular Affairs).

SENATE REPORT No. 96-179 accompanying S. 490 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD, Vol. 125 (1979):

July 9, considered and passed House

July 30, considered and passed Senate, amended, in lieu of S. 490.

Oct. 12, House agreed to Senate amendments with an amendment.

Oct. 17, Senate concurred in House amendment.



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

WASHINGTON, D.C. 20240

8111 (341)

Affects
Manual
Section
8111

August 4, 1983

Instruction Memorandum No. 83-746
Expires 9/30/84

To: State Directors

From: Director

Subject: Interim Policy on Cultural Resource Inventory; Modification of
BLM Manual Section 8111

A recent decision by the Interior Board of Land Appeals (IBLA; Board) directed the Bureau of Land Management (BLM) to ". . . conduct a complete and proper cultural resource inventory . . ." in an Oregon timber sale area before allowing entry onto the land for timber harvesting (In re Lick Gulch Timber Sale, 72 IBLA 261, April 28, 1983; Enclosure 1). The Board cited various provisions in Manual Section 8111 in support of its decision.

The central cultural resource issue in the IBLA decision is the completeness of on-the-ground survey in areas of proposed disturbance (BLM Manual 8111.14). Neither the Manual nor the decision accounts for the role of the State Historic Preservation Officer, pursuant to 36 CFR 800.4(a)(1), in assisting the Agency Official to determine the need for survey, and/or the type of survey necessary, for a particular action. The Office of the Solicitor advises us that even if the Board had directly considered the 36 CFR 800 process, Manual direction could nevertheless have been treated as the governing authority on inventory standards and procedures.

The 8111 Manual has been in effect since March 1978. Its wording suggests that class III inventory must always be done in areas of proposed surface disturbance, and that it must always be done in a particular way. Several past Instruction Memoranda (I.M.) have tacitly amended the Manual by stressing the concept of reasonableness in the kind and amount of survey done. With regard to rights-of-way, I.M. No. 80-282 and I.M. No. 81-29 advised that class III inventory need not always be done for all parts of project alignments. Similarly, I.M. No. 82-162 encouraged development of alternatives, where feasible, to doing class III inventory for oil and gas development. However, even if these I.M.'s are considered to change the Manual, they can only be construed to do so where rights-of-way or oil and gas development are concerned. As in the case in question, managers following the consultation process in 36 CFR 800 have routinely arrived at decisions to do less than full class III survey on proposed project areas. The IBLA decision points out that this is not in keeping with the Manual.

Over the past few years we have recognized the need to update the cultural resource Manual sections, but we have delayed making changes in the expectation

that program regulations would soon be promulgated. Since action on program regulations is temporarily suspended, and in light of the IBLA decision based on outdated Manual provisions, the only reasonable approach is to modify the Manual. The Office of the Solicitor concurs in this approach (Enclosure 2). This Instruction Memorandum provides interim change to the 8111 Manual. Manual releases changing the Manual itself will be issued in the near future.

Effective with the date of this Instruction Memorandum, BLM Manual Section 8111 will be read as a general how-to Manual. Determining when to apply various classes of cultural resource inventory may be guided by the Manual, but decisions reached through the consultation process in 36 CFR 800 will control. Class III inventory to full Manual specifications may not always be necessary where ground disturbance or land disposal is proposed. Because cultural resource survey conditions and methods vary from region to region, class III inventory methods will conform to the prevailing professional cultural resource survey standards for the region involved.



James H. Parker

Associate Director

2 Enclosures:

- Encl. 1 - 72 IBLA 261; In re Lick Gulch Timber Sale (8 pp)
- Encl. 2 - Solicitor's memorandum of July 12, 1983 ("Cultural Resource Inventory Requirements") (1 p)



UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

MANUAL TRANSMITTAL SHEET

Release

8-3

Date

3/6/78

Subject

8111 - CULTURAL RESOURCE INVENTORY
AND EVALUATION (UPLAND)

1. Explanation of Material Transmitted: This release provides guidelines and describes the procedures for inventory and evaluation of cultural resources on the uplands.
2. Reports Required: None.
3. Material Superseded: None.
4. Filing Instructions: After the attached sheets have been filed as directed, this transmittal sheet may be discarded.

REMOVE:

None

INSERT:

8111

(Total: 16 Sheets)

(EXTRACTS)
ONLY

George L. Twest

Associate Director

8111 -- CULTURAL RESOURCE INVENTORY
AND EVALUATION (UPLAND)

.1

.1 Inventory.

.11 Classes of Inventory. The cultural resource inventory program is composed of three classes of inventory. Each class of inventory is designed to provide specific kinds of cultural resource data for the Bureau's various planning and management needs.

Class I - Existing Data Inventory--a review and compilation of known cultural resource data.

Class II - Sampling Field Inventory--a sample-oriented field inventory.

Class III - Intensive Field Inventory--a complete surface inventory of a specific area.

.12 Class I - Existing Data Inventory.

A. Objectives. The objectives of a Class I cultural resource inventory study are to:

1. Provide a review and synthesis of the existing cultural resource information, both historic and prehistoric, available for a BLM District.

2. Identify all recorded cultural resource sites through a compilation of the existing site record data for the defined area. In this context, recorded cultural resources refer to those cultural, archeological, and historical sites and properties for which a record form has been prepared and entered as part of a formal inventory record system (e.g., Smithsonian Statewide record systems, university archeological site files, State Historic Preservation Plans, and the National Register of Historic Places).

B. Part I - Cultural Resource Overview.

1. Method.

a. Define the study area. The area covered is usually a BLM District. However, large BLM Districts may be more adequately covered by a series of two or three cultural resource overviews, each for cultural subregions or definable geographic areas (study areas) within the District. If a large BLM District is divided into Class I study areas, these areas must be as large as possible and utilize appropriate multi-planning unit boundaries.

8111 - CULTURAL RESOURCE INVENTORY
AND EVALUATION (UPLAND)

b. Cover the whole study area regardless of landownership. However, place major emphasis during preparation of the cultural resource overview on cultural resources that are on, or immediately adjacent to, BLM-surface-administered lands.

c. Compile general background data and bibliographies on the prehistory and history of the study area. Do not include compilation of site records.

d. Undertake a brief field reconnaissance of the study area to gain familiarity with the area and local information sources.

e. Draft a working thematic outline of the prehistory and history of the study area drawing on, but not limited by, the Historical Themes in Western American and Alaskan History (Illustration 1). The outline serves as a guide in data compilation and report preparation.

f. Consult all reasonably available bibliographies, documents, published literature, manuscript and archival sources, maps, reports, museum collections, and other primary and secondary sources bearing on the prehistory and history of the study area. Use publications, site lists, and records dealing with known cultural resources in the study area (including existing BLM site records and cultural resource data). However, use these only to familiarize researchers with the types and varieties of recorded cultural resources related to the study area.

g. Consult with professional and amateur historians, archeologists, and local people knowledgeable about the history and prehistory of the study area.

h. Prepare a cultural resource overview, with appropriate support graphics and appendices (see .12B2).

2. Report Content and Format. The cultural resource overview is a professionally researched and written narrative of the prehistory and historic human use and occupation of the area from the earliest times to the present. It should be a balanced document, treating the various cultural resource concerns (e.g., time periods) on equal levels. The cultural resource overview should contain the various categories discussed below. Follow this sequence of presentation, including the desired content for each category, as closely as practical. However, retain flexibility in organization of the various categories so as to present the information in a fashion best representing current knowledge and needs. The cultural resource overview includes the following:

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a. Abstract. Provide a 250-word or less abstract of the cultural resource overview. The abstract must outline the cultural resource overview content and refer to specific highlights from the narrative. This abstract is used for other reference systems, such as the National Technical Information System (NTIS).

b. Cultural Resource Management Summary. Provide an "executive summary" capsulizing the salient points of the complete Class I inventory study (including Part I and Part II). Provide concise statements about the study area's cultural resource data base. Identify significant points regarding the prehistoric and historic human use and occupation of the area, and briefly point out the values of the cultural resources. The cultural resource management summary should enable the reader to ascertain Class I inventory results without reading the entire cultural resource overview. The cultural resource management summary should not exceed 10 doubled-spaced pages. (Prepare this section last.)

c. Orientation. Identify the study area, reasons and goals for the study, underlying assumptions, theoretical orientation, and methodological approach to data compilation. If appropriate, identify problems encountered in undertaking work and steps taken to resolve them. Identify the personnel employed and the role of each person, and provide a schedule of time spent on data review, fieldwork, and report preparation.

d. Environmental Background. Briefly discuss past and present environmental factors important to understanding the study area's prehistoric and historic human use and occupation. These factors include geographic features, climatic changes, hydrological history, and changes in the regional vegetation and faunal patterns over time. Include information such as pollen data, carbon dates, terrain analysis (e.g., geological inferences), and historical documents, if available and appropriate.

e. Cultural Resource Investigation and Research Background.

(1) Summary of Past and Current Work. Provide a general discussion of the pertinent past and current archeological/anthropological and historical investigations in the study area. Use the format outlined in Illustration 2 to provide a brief summary of each pertinent research and/or investigation project or series of pertinent projects which has contributed to knowledge about the cultural resources of the area.

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(2) Collections. Provide a brief discussion of cultural resource collections from the study area. This discussion should include a summary of museum and university archeological and historical artifact collections, catalogues, and archival information, as well as referencing available photographic records and reference collections.

(3) Present Research Orientations. Briefly discuss present cultural resource research orientations, problems, and objectives within the study area. Discuss any regional or problem-specific research designs or strategies presently planned or being implemented within the area. If none exist, then discuss specific research designs, strategies, or orientations from the surrounding areas which may be pertinent to the study of the cultural resources within the study area.

f. Cultural Resource Narrative. This section constitutes a major portion of the cultural resource overview, and serves as the data base for the synthesis to be formulated in section h. Organize the narrative under the three separate categories of prehistory, history, and contemporary cultures, as discussed below. The narrative(s) should represent the full array of cultural resource information available for the area. The narrative(s) should be prepared by qualified archeologists/anthropologists and historians familiar with the area and its cultural resources, or by individuals who have otherwise demonstrated ability to adequately research and write such a document. Under each category below is a discussion of topics to be considered. These topics may be combined, reorganized, added to, or discounted, as appropriate.

(1) Prehistory.

(a) Cultural History. Discuss the reconstructed prehistoric and protohistoric chronology of the study area using appropriate cultural units, including the temporal components, cultural sequences, and/or phases utilized in the area. Discuss the cultural traits, complexes, or artifacts which define or distinguish each cultural unit.

(b) Prehistoric Lifeways. Discuss prehistoric and protohistoric lifeways developed from the archeological and ethnographical record. Consider such factors as past technology, subsistence, settlement patterns, material culture, social and religious systems, political alliances, and linguistic patterns. Include ethnohistorical data if available. Identify applicable sources from which ethnographic inferences can be made.

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AND EVALUATION (UPLAND)

(2) History.

(a) Historic Themes. Discuss the historic period, utilizing the Historic Themes in Western American and Alaskan History (see Appendix 1) as a guide; the themes used should reflect specific area history. In developing the narrative, make use of historical, military, scientific, personal, and government accounts, documents, diaries, other primary and secondary source material, and other resources; historic routes of travel (e.g., routes of early explorations, expeditions, wagon roads, and railroads), and ethnic history (dealing with specific ethnic groups). Use a thematic approach to each unit or chapter as appropriate.

(b) Historic Lifeways. Discuss the lifeways of the various historic groups. Focus on historic material culture as reflected in the tangible evidence remaining, or possibly remaining, in the study area.

(3) Contemporary Culture. Identify and briefly discuss populations presently occupying the study area, or which may presently recognize, associate with, and/or utilize cultural resource properties (e.g., a sacred mountain) within the area. Cite relevant ethnographic data.

g. Cultural Chronology Summary. Provide a brief cultural chronological list or outline of the major prehistoric, historic, and contemporary events, phases, occurrences, or incidents that took place within, or affected, the study area. Consider inclusion of a timeline to graphically illustrate the developed outline.

h. Cultural Resource Synthesis. Provide a concise synthesis of the existing cultural resource data, depicting the human use and occupation of the study area from prehistoric times to the present. The synthesis summarizes the information on cultural resource processes derived from the existing data base. This discussion is processual in nature and deals specifically, but not exclusively, with changes in settlement patterns and land use, land tenure, the changing nature of cultural systems within the area over time, and other topics necessary to provide a coherent synthesis of human use and occupation of the area.

i. Suggested Management Options and Research Directions. Briefly discuss general questions and issues relating to future archeological and historical research and cultural resource management in the study area. Indicate gaps in the present data base related to these questions and issues. Suggest future research goals and investigation needs. Discuss relevant cultural resource management options for the study area and why such options are important.

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j. Appendices. Provide relevant appendices developed as a result of the preceding sections. Examples might include population data, radiometric dates, specific food resources, select historic documents, and/or additional area-specific information (e.g., rock art analysis or oral history).

k. Bibliography. Provide an annotated bibliography of all relevant sources, including all those directly cited in the Cultural Resource Overview.

l. Maps and Graphics. Provide appropriate maps, charts, tabulations, and graphics necessary to support the narrative.

C. Part II - Known Cultural Resource Site Record Compilation.

1. Method.

a. Utilizing the same study area as in Part I, determine what cultural resource site record systems, lists, registers, master site location maps, and other cultural resource property data sources exist and are available for the study area.

b. Maps.

(1) Prepare a set of maps plotting the location of all (unless density precludes such plotting) recorded cultural resource sites and properties within the study area. Each site plotted must be identified by an appropriate reference number. Maps should be United States Geological Survey (USGS) 7-1/2' topographic maps or the equivalent.

(2) Prepare a large District map showing the general location and distribution of all the known and recorded cultural resource sites and properties.

c. Prepare a summary table of all the recorded cultural resource sites and properties within the District (study area).
(See .12C2b for more detail.)

d. Where available, obtain copies of data from all existing cultural resource site record forms, register records, related site record data, and maps for cultural resource sites and/or properties on BLM-surface-administered lands within the study area.

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e. Limit field reconnaissance to ground-truthing select cultural resource sites and/or properties. At a minimum, this field reconnaissance includes an assessment of those sites or properties on BLM-surface-administered lands which the existing information indicates may be potential candidates for the National Register of Historic Places, but that lack current or complete data on their condition, nature, and extent. Document such properties, utilizing a cultural resource inventory record which contains, at a minimum, the data outlined in .31A.

f. Prepare the report narrative with the site summary table, cultural resource site records, and maps (see .12C2).

2. Report Content and Format. The Part II report--known cultural resource site record compilation--consists of a brief narrative accompanied by a cultural resource site summary table, cultural resource site records, and a set of cultural resource site location maps. If Part II is prepared at the same time as Part I, the report narrative and site summary table should be physically included with the cultural resource overview as Part II of the report. The Part II report should follow the format discussed below.

a. Report Narrative. Compile the report narrative as follows:

(1) Background. Briefly indicate sources utilized, time and personnel involved, any problems encountered in compiling the site record data, and method utilized.

(2) Cultural Resource Site Record Systems. Provide a brief discussion of the existing cultural resource site record systems in use and/or available for the area. Give the total number of sites formally recorded for the study area and give a breakdown by each site record system, counting only those sites that are within the study area. Describe the site numbering systems and indicate the locations where the various records are maintained.

(3) Site Classification. Give a short working definition of the term "site" as used in the study area. Give the array of cultural resource site types for the area and include a concise definition of each. Include a brief discussion of other cultural resource property categories utilized in the study area.

8111 - CULTURAL RESOURCE INVENTORY
AND EVALUATION (UPLAND)(4) Formal Recognition.

(a) National Register of Historic Places. Identify all cultural resource properties (e.g., districts, sites, buildings, structures, and objects) within the area that are listed on, or have formally been determined to be eligible for listing on, the National Register of Historic Places. Provide a brief discussion of each property. Indicate whether any of the properties are also formally recognized as National Historic Landmarks or part of the Historic American Buildings Survey (HABS) and/or the Historic American Engineering Record (HAER).

(b) State and Local Recognition. Identify all cultural resource properties formally recognized by the State, county, or local government or organizations as historical landmarks or places of historical or cultural interest. Provide a list of cultural resource properties within the area that are identified in the Statewide Historic Preservation Plan, if not identified by the above.

b. Site Summary Table. Provide a site summary table listing of all recorded sites for the defined area. The site summary table should identify, if possible, at least the following:

- (1) Site reference number.
- (2) Location (cadastral or UTM).
- (3) Ownership.
- (4) Site function/type.
- (5) Cultural affiliation/historical theme.
- (6) Chronological placement.
- (7) Formal recognition.
- (8) Recorder.
- (9) Date recorded.

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c. Cultural Resource Site Records. Obtain a clear copy of each recorded cultural resource site record form and related data (i.e., continuation sheets, site sketch maps, and related materials) available for each site formally recorded on BLM-surface-administered lands within the study area. If a copy of the actual site record is unobtainable, transfer the data to a cultural resource inventory record which includes at a minimum the information outlined in .31A. Compile site records separately and merely cite in the report narrative.

d. Maps.

(1) Plot all recorded cultural resource sites within the study area, distinguished by site reference number, on a set of USGS 7-1/2' topographic maps or similar maps (e.g., 15' topographic maps). The set of maps should be cited in the report narrative.

(2) Prepare a single study area map showing the location of all cultural resource sites and properties.

.13 Class II - Field Sampling Inventory.

A. Overall Objectives and Background.

1. The objectives of a Class II inventory are to identify and record, from surface and exposed profile indications, all cultural resource sites within a portion of a defined area.

2. The Class II inventory provides the data base for making an objective estimate of the nature and distribution of cultural resource sites within the study area (i.e., the population to be sampled). Class II inventory is a tool utilized in management and planning activities to predict cultural resources in the area of consideration. Since the method is not designed to completely inventory an area, it cannot be used for site-specific cultural resource clearance unless the site-specific area coincides with previous intensively inventoried sampling units.

3. Class II inventory provides the opportunity to sample an entire planning unit or large project area (i.e., the area covered by a regional environmental statement), and provides sampling for special projects which are usually smaller in area, and/or those areas with special management or research needs. Under constraints of time, manpower, and funding, a sampling approach is cost effective, allows large areas to be assessed, and, when coupled with followup purposive surveys, provides an objective measure for accuracy of inventory results.

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4. A Class II inventory normally follows a Class I inventory. Individual planning or project units are covered on the ground at a Class III level.

B. Bureauwide Objective. The Bureauwide objective of the Class II inventory is to obtain a meaningful and representative sample of all cultural resources on lands administered by the Bureau. While each region must be treated on a case-by-case basis, a minimum sample of 10 percent of BLM-administered lands is the general Bureauwide objective. However, the actual sampling fraction utilized depends on a variety of factors, including size of the sampling universe and level of confidence desired. The maintenance of comparability in sampling approaches and general methodology is important. Reasonable flexibility is allowed.

C. Examples of Specific Objectives. Sampling inventories must be designed to meet management needs and should be directed to specific objectives such as the following:

1. Discovery, recognition, or elaboration of patterns of past human use and occupation of given regions.
2. Determination of the cultural resource potential of an inventory area.
3. Prediction of zones of greater or lesser activity by past human populations.
4. Identification and assessment of the environmental and/or cultural variables, or combination of variables, that form the most accurate predictors of cultural resource sites.
5. Development of projections of expected density distribution and diversity of cultural resources.
6. Discovery of the range of cultural resource variability within an inventory area.
7. Provision of an objective means of assessing the existing cultural resource inventory.
8. Development of a systematic base for planning decisions concerning cultural resources.

D. Types of Class II Inventory.

1. Sampling of Planning Units and Large Project Areas.

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a. Objectives. Field sampling inventories of planning units or large project areas provide the greatest opportunity to ensure Bureauwide consistency in sampling results and to develop a useable framework on which future cultural resource inventories can be built. Therefore, this type of Class II inventory is intended to provide uniform cultural resource field data to ensure accuracy and comparability of Bureau planning documents and regional environmental assessments. Since these data must be comparable, the estimates of site number density, distribution, and diversity must be capable of expression in a quantitative mathematical measure of intended accuracy and confidence. The concern for accuracy and comparability in Bureau cultural resource inventories of large geographic areas necessitates providing, at a minimum, the following data:

- (1) Estimates of the number of cultural resource sites.
- (2) Estimates of the density and distribution of cultural resource sites.
- (3) Determination of the diversity of cultural resources.

b. Method.

(1) Sampling Scheme. Utilize a stratified, probability (random) sampling scheme. The sampling scheme may consist of various phases, but in all cases, the primary phase must ensure that the entire population is given an equal chance of being sampled. Subsequent phases may involve increasing the sample of select strata, restratification of select portions of the sampling universe, purposive selection of additional sampling units, and/or integration of judgmental reconnaissance or unsystematic survey into the sampling scheme.

(2) Sampling Strata. Develop stratification utilizing a selected environmental variable or a combination of environmental variables (e.g., vegetation, geomorphology, and hydrology) where possible. Such strata should be meaningful in terms of past human activities, both prehistoric and historic. Attempt to keep the number of sampling strata (i.e., sampling domains or subpopulations) to a working minimum.

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(3) Sampling Units. Divide the entire inventory sampling area (e.g., planning units) into sample units of comparable size. The total number of sampling units for the inventory area then constitutes the population to be sampled (i.e., the sampling universe). The sampling units for a given inventory area should be as comparable as possible with inventory work in contiguous areas. Sampling units should conform to the existing cadastral grid and should be structured as either square or rectangular quadrats. Quadrats should be no smaller than 1/4-mile on a side and no larger than 1 mile on a side. Full sections or half sections are recommended sampling unit sizes. Sampling units should be confined to land administered by the Bureau of Land Management unless prior agreement has been made with other land-owners.

(4) Selection of the Sample. Draw the initial sample for each planning unit from a random numbers table or its equivalent. Each increment should be sequentially numbered. All sampling units must be given an equal chance of being selected. Future efforts should build on past inventory work and be integrated into the sampling design of the basic inventory area. In the initial sample, sample size by stratum must be consistent for all strata. Following samples can vary by stratum depending on size, environmental complexity, prediction of prehistoric or historic land use, and other factors.

(5) Site Type Definition. Develop site type definitions and criteria to be operationally consistent with the objectives outlined above and to have regional application and consistency. Provide the cultural, spatial, and functional units of measurement used to define the site types.

(6) Field Implementation. Implement the developed sampling design. The field implementation of a Class II inventory follows the same procedures as a Class III inventory (see .14B).

2. Sampling for Special Projects.

a. Objective. The objective of this type of Class II inventory is to provide flexibility in dealing with special sampling inventory problems (e.g., linear rights-of-way) and unusual or project specific situations where other sampling schemes (e.g., vectors, transects, clusters, etc.) or designs (e.g., field sampling the existing cultural resource site record) may need to be utilized or developed.

(1) Consider those areas generally smaller in size than planning units or large project areas, and/or those areas that contain special management or research needs. An objective measure of accuracy of the inventory results is necessary.

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(2) Sampling should include one or more stages. Where possible, first stage sampling should be systematic, replicable, and contribute to subsequent sampling stages. Judgmental reconnaissance and/or unsystematic survey can be utilized to support the systematically collected data.

b. Method.

(1) Project Information. Identify the project area, type of project for which a sampling design is being developed, and the objectives to be accomplished by the Class II inventory.

(2) Sampling Design Development. Develop a sampling design which, within the constraints identified (e.g., time, terrain, and funding), most adequately meets the objectives identified.

(3) Field Implementation. Implement the developed sampling design. Field implementation of the sampling design should follow the same procedures as a Class III inventory (see .14B).

3. Report Content and Format. Upon completion of the Class II inventory field work, prepare a professional quality report. The report should consist of the general categories outlined below. Flexibility is provided to ensure that the report focuses on the pertinent results and addresses current needs and interests.

a. Abstract. Provide a 250-word or less abstract of the report. The abstract must outline the report content and refer to specific highlights from the narrative.

b. Background Data. Provide a brief discussion of the project and a brief description of the study area. Provide a brief background summary of the culture history and cultural processes within the study area. Do this by referring to appropriate sections of the completed Class I cultural resource overview reports that cover the area concerned. Refer also to appropriate literature and to work that may have become available since the Class I report was prepared.

c. Sampling Design. State accurately the inventory's objective and strategy. Include definitions of the sampling terms used and a discussion of the site typology employed. Discuss the variables used to define each site type. Also discuss the population sampled, the sampling unit size, the sampling strata developed, and the selection of the sample. Describe the field methodology utilized.

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d. Inventory Results.

(1) Description of Cultural Resource Sites. Provide a summary description of the cultural resource sites found. Use graphics and tables as appropriate.

(2) Quantitative and Qualitative Results. Discuss the quantitative and qualitative manipulation of the data from the inventory. Include, as appropriate, estimates of the number, density, and distribution of cultural resource sites, and determination of the diversity of cultural resources.

(a) Discuss the density and diversity in different portions of the sampling area. Use the Class II study or other regional subdivision schemes as necessary to depict the variability. Density can be depicted from the point of view of sites, components, and cultural or functional types.

(b) Discuss any significant correlations of cultural resources with the natural environment, as revealed by the Class II inventory. Compare Class II inventory results for these topics with the results of other inventory data (e.g., Class II site data with other site data). Discuss the results by specific objectives which the inventory was designed to accomplish.

(3) Evaluation of Results. Discuss the reliability of the inventory results, changes in the original objectives or strategy, and major gaps in the inventory data.

e. Resource Synthesis. Provide a summary of the relevant data and discuss perceived patterns and relevant processes. Discuss any contributions made to the study of the region's cultural resources.

f. Suggested Management Options and Research Directions. Briefly discuss questions and issues raised through the inventory, related to future archeological and historical research and cultural resource management needs in the area. Suggest future inventory and investigation needs and directions.

g. Appendices. Provide relevant appendices developed as a result of the preceding sections.

h. Bibliography. Include a bibliography of all sources cited in the report.

i. Maps and Graphics. Provide appropriate maps, charts, tabulations, and graphics necessary to support the report narrative.

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.14 Class III - Intensive Field Inventory.

A. Objectives. The objective of a Class III inventory is to identify and record, from surface and exposed profile indications, all cultural resource sites within a specified and defined area. The Class III inventory results in a total inventory of cultural resource sites observable within a specified area. Upon completion of Class III inventories within a specified area, no further cultural resource inventory work will usually be needed. However, further cultural resource data studies may be carried out, as necessary. (See .14C4.)

B. Method. Define the area of the inventory accurately and clearly. Actual ground coverage results in the identification and recordation of all cultural resource sites observable from surface and exposed profile indications. Use the following guidelines:

1. Review the existing cultural resource site records prior to beginning actual ground coverage. Identify all recorded cultural resource sites within the area to be inventoried.
2. Locate, on the ground, the boundaries of the inventory area prior to beginning the inventory. Use corner markers, benchmarks, topographic maps, aerial photographs (where available), and other locational features and aids. This ensures ground control and proper location of cultural resource sites.
3. Cover the area to be inventoried on foot, utilizing adjacent sweeps. Spacing between crew members should not exceed 30 meters. However, spacing may be varied according to terrain, obtrusiveness, visibility, or other factors provided a valid rationale for intensity of coverage is presented. In all cases, coverage should be thorough, and continuity between sweeps must be maintained.
4. Record each cultural resource site identified (see .3).

C. Report Content and Format. For all Class III inventories, prepare a report commensurate with the project's size and the quality and quantity of cultural resources present. For small-scale projects involving minimal surface disturbance, or small project areas having no cultural resources, a brief summary document, with appropriate maps and site forms, which addresses the general categories outlined below, may be all that is necessary. For large-scale projects involving extensive surface disturbance and numerous cultural resources, a detailed report with extensive documentation may be required. All Class III reports should provide an appropriate level of data for the following categories of information:

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1. Abstract. Provide a 250-word or less abstract of the Class III inventory report. The abstract must outline the report contents and refer to specific highlights of the findings.

2. Project Information. Include identification of the project and BLM serial case file number, if any, for which the work is being done, reasons for the inventory, identification of crew size, dates of fieldwork, problems encountered, and disposition of original records and data.

3. Description of the Study Area. Provide a brief description of the environmental setting and consider relevant phenomena such as vegetation, geology, climate, and topography in relation to the cultural resources in the inventory area. Refer to applicable environmental sources (e.g., specific environmental statement data).

4. Field Method. Describe the inventory method and reasoning utilized and discuss the specific strategy employed. Discuss the confidence in meeting the objective of a total inventory of cultural resource sites within the specified area. Discuss the potential for finding additional surface and subsurface sites and define further data needs.

5. Description of Cultural Resource Sites. Provide a brief description of each site. Consider the following factors: site location, site function, cultural affiliation/historical themes, chronological placement, site size, environmental setting, and site condition. Utilize tables and graphics as appropriate.

6. Resource Synthesis. Provide a summary of the findings. Discuss findings in relation to previous or ongoing work within the region, contribution to regional research orientations, or inferences to area cultural history or culture process.

7. Appendices. Provide any relevant data developed as a result of the preceding.

8. Bibliography. Include a bibliography of all references directly utilized in the report.

9. Maps and Graphics. Provide appropriate maps, charts, tabulations, and graphics necessary to support the report narrative.

.3 Recordation.

.31 Cultural Resource Inventory Record.

A. Site Attributes. As each site is found and defined during Class II and/or III field inventory, record the information observed. Prepare an inventory record noting the following:

1. Site Location. Locate the site in relation to either the cadastral system (longitude/latitude coordinates) or the Universal Transverse Mercator (UTM) system, as appropriate to the area in which the work is being performed. Provide a written locational description for each site.

2. Site Function. Determine site function primarily by the nature of the features, structures, artifact assemblages, and ecofactual data present. The presence or absence of certain environmental variables may also assist in the determination. Examples of relevant criteria to consider may include ceramics (list the types present, estimate the percentage of each present in the site), lithics (identify types and percentages of each), nails (size, form, construction), cartridge cases (material, size, headstamps), structures and/or features (describe and include a map or sketch showing dimensions and location within the site), and other noteworthy features or artifacts of the site, including but not limited to exotic items, bones, seeds, charcoal concentrations, middens, historical items (glass, leather, iron, tin cans, ceramics, etc.).

3. Cultural Affiliation/Historical Themes. Use diagnostic artifacts, structures, features identified during the investigation of site function, and the known cultural resource information available for the area. Indicate which diagnostic attributes were used to determine cultural affiliation and/or historical themes relationships.

4. Chronological Placement. Establish chronological placement through the use of indicators such as time-sensitive artifacts, structures, or features. Indicate which diagnostic attributes were used.

5. Site Size and Depth. Identify site size, depth, and intensity of occupation or use. Estimate from number of rooms, historical documentation, midden deposits, exposed profiles, etc.

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6. Environmental Setting. Identify the environmental setting in which the site lies. List observed resources within the immediate environs of the site and describe any evidence of their utilization within it.

7. Site Condition. Discuss the site condition and identify intrusions impacting context, integrity, sources of deterioration, and measures required to retard deterioration.

B. Field Collection. Analyze and record in the field all cultural resources and artifacts; collection of artifacts for later laboratory analysis should be discouraged. Limit collection of cultural materials only to significant material in immediate danger of destruction or disturbance.

C. Subsurface Probing. Undertake minimal subsurface probing (very minor testing for depth of deposits, etc., not to be confused with full-scale archeological test excavation procedures) only when needed to facilitate site analysis and evaluation. Back-fill probe holes to original contour.

D. Maps. Plot all sites, in composite, on USGS 7-1/2' topographic maps or similar maps (e.g., USGS 15').

E. Photographs. Photograph each site, if reasonably possible. Keep photographic logs of all photographs.

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.4 Personnel to Conduct Inventories and Evaluations.

.41 Professional Personnel.

A. Bureau. Professional cultural resource employees (archeologists, historians, and architectural historians) can undertake inventories, perform fieldwork, or manage and coordinate inventories and evaluations through contracts or use of professionally qualified temporary employees. Cultural resource site evaluations are made or approved by Bureau professional cultural resource personnel only. Technicians may be used, but only under the direct supervision of a qualified Bureau professional cultural resource employee.

B. Non-Bureau. Professional services for inventories and/or evaluations can be obtained under contract with qualified universities, museums, colleges, and private enterprise investigators. The services of other qualified professional cultural resource employees from other Federal or governmental agencies can also be utilized.

.42 Non-Professional Personnel.

A. Bureau. Employees of the Bureau who are not cultural resource professionals should not conduct cultural resource inventories. However, adequately trained and supervised employees of the Bureau who are not cultural resource professionals can participate in Bureau cultural resource inventories if under the approval and direct supervision of a professionally qualified cultural resource specialist.

B. Non-Bureau. Non-professional personnel from outside of the Bureau should not conduct cultural resource inventories on BLM-administered lands. Non-professional personnel from outside of the Bureau may participate in non-Bureau cultural resource inventory work on BLM-administered lands if they are under the direct supervision of a professional cultural resource specialist holding a current antiquities permit for the work.

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.5 Maintenance of Inventory and Evaluation Data.

.51 Records File. Each District Office maintains a permanent cultural resource inventory and evaluation records file. At a minimum, the records file includes all cultural resource inventory records (CRIR) and all cultural resource evaluation records (CRER) prepared for cultural resource sites or properties within the District.

.52 Master Maps. Each District Office maintains a master set of maps plotting the location of all (unless density precludes such plotting) recorded cultural resource sites and properties within the District. Each site or property plotted must be identified by an appropriate reference number. Maps should be USGS 7-1/2' topographic maps or the equivalent. Keep current and updated as additional data become available.

.53 Inventory Reports. Each District Office keeps a permanent file of all cultural resource inventory reports (i.e., Class I, II, and III) completed within the District for Bureau and Bureau-related projects.

PART 800—PROTECTION OF HISTORIC AND CULTURAL PROPERTIES

Sec.

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- 800.12 Investigation of threats to National Register and eligible properties.
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- 800.15 Public participation.

AUTHORITY: Pub. L. 89-665, 80 Stat. 915 (16 U.S.C. 470), as amended, 84 Stat. 204 (1970), 87 Stat. 139 (1973), 90 Stat. 1320 (1976), 92 Stat. 3467 (1978); E.O. 11593, 3 CFR 1971 Comp. p. 154; President's Memorandum on Environmental Quality and Water Resources Management, July 12, 1978.

SOURCE 44 FR 6072, Jan. 30, 1979, unless otherwise noted.

§ 800.1 Purpose and authorities.

(a) The National Historic Preservation Act of 1966, as amended, established the Advisory Council on Historic Preservation as an independent agency of the United States to advise the President and the Congress on historic preservation matters, recommend measures to coordinate Federal historic preservation activities, and comment on Federal actions affecting properties included in or eligible for inclusion in the National Register of Historic Places. Its members are the Secretary of the Interior, the Secretary of Housing and Urban Development, the Secretary of Commerce, the Administrator of General Services, the

Secretary of the Treasury, the Attorney General, the Secretary of Agriculture, the Secretary of Transportation, the Secretary of State, the Secretary of Defense, the Secretary of Health, Education, and Welfare, the Chairman of the Council on Environmental Quality, the Chairman of the Federal Council on the Arts and Humanities, the Architect of the Capitol, the Secretary of the Smithsonian Institution, the Chairman of the National Trust for Historic Preservation, the President of the National Conference of State Historic Preservation Officers, and 12 citizen members from outside the Federal Government appointed for five-year terms by the President on the basis of their interest and experience in the matters to be considered by the Council.

(b) The Council protects properties of historical, architectural, archeological, and cultural significance at the national, State, and local level by reviewing and commenting on Federal actions affecting National Register and eligible properties in accordance with the following authorities:

(1) Section 106 of the National Historic Preservation Act. Section 106 requires that Federal agencies with direct or indirect jurisdiction over a Federal, federally assisted or federally licensed undertaking afford the Council a reasonable opportunity for comment on such undertakings that affect properties included in or eligible for inclusion in the National Register of Historic Places prior to the agency's approval of any such undertaking.

(2) Section 1(3) of Executive Order 11593, May 13, 1971, "Protection and Enhancement of the Cultural Environment." Section 1(3) requires that Federal agencies, in consultation with the Council, institute procedures to assure that their plans and programs contribute to the preservation and enhancement of non-federally owned historic and cultural properties.

(3) Section 2(b) of Executive Order 11593, May 13, 1971, "Protection and Enhancement of the Cultural Environment." Federal agencies are required by Section 2(a) of the Executive Order to locate, inventory, and nominate properties under their jurisdiction or control to the National Register. Until

such processes are complete, Federal agencies must provide the Council an opportunity to comment on proposals for the transfer, sale, demolition, or substantial alteration of federally owned properties eligible for inclusion in the National Register.

(4) The President's Memorandum on Environmental Quality and Water Resources Management. The Memorandum directs the Council to issue final regulations under the National Historic Preservation Act by March 1, 1979, and further directs Federal agencies with water resource responsibilities and programs to publish procedures implementing the Act not later than three months after promulgation of final regulations by the Council. Federal agencies' procedures are to be reviewed and, if they are consistent with the Council's regulations, approved by the Council within 60 days and published in final form.

§ 800.2 Definitions.

As used in these regulations:

(a) "National Historic Preservation Act" means Pub. L. 89-665, approved October 15, 1966, an "Act to establish a program for the preservation of additional historic properties throughout the Nation and for other purposes" (80 Stat. 915, 16 U.S.C. 470, as amended; 84 Stat. 204 (1970), 87 Stat. 139 (1973), 90 Stat. 1320 (1976), 92 Stat. 3467 (1978)), hereinafter referred to as "the Act."

(b) "Executive Order" means Executive Order 11593, May 13, 1971, "Protection and Enhancement of the Cultural Environment" (36 FR 8921, 16 U.S.C. 470).

(c) "Undertaking" means any Federal, federally assisted or federally licensed action, activity, or program or the approval, sanction, assistance, or support of any non-Federal action, activity, or program. Undertakings include new and continuing projects and program activities (or elements of such activities not previously considered under Section 106 or Executive Order 11593) that are: (1) Directly undertaken by Federal agencies; (2) supported in whole or in part through Federal contracts, grants, subsidies, loans, loan guarantees, or other forms of direct and indirect funding assist-

ance; (3) carried out pursuant to a Federal lease, permit, license, certificate, approval, or other form of entitlement or permission; or, (4) proposed by a Federal agency for Congressional authorization or appropriation. Site-specific undertakings affect areas and properties that are capable of being identified at the time of approval by the Federal agency. Non-site-specific undertakings have effects that can be anticipated on National Register and eligible properties but cannot be identified in terms of specific geographical areas or properties at the time of Federal approval. Non-site-specific undertakings include Federal approval of State plans pursuant to Federal legislation, development of comprehensive or area-wide plans, agency recommendations for legislation and the establishment or modification of regulations and planning guidelines.

(d) "National Register" means the National Register of Historic Places. It is a register of districts, sites, buildings, structures, and objects of national, State, or local significance in American history, architecture, archeology, and culture that is expanded and maintained by the Secretary of the Interior under authority of section 2(b) of the Historic Sites Act of 1935 (49 Stat. 666, 16 U.S.C. 461) and Section 101(a)(1) of the National Historic Preservation Act implemented through 36 CFR Part 60. The National Register is published in its entirety in the FEDERAL REGISTER each year in February. Addenda are usually published on the first Tuesday of each month.

(e) "National Register property" means a district, site, building, structure, or object included in the National Register.

(f) "Eligible property" means any district, site, building, structure, or object that meets the National Register Criteria.

(g) "National Register Criteria" means the criteria established by the Secretary of the Interior to evaluate properties to determine whether they are eligible for inclusion in the National Register. (See 36 CFR 60.6.)

(h) "Decision" means the exercise of or the opportunity to exercise discretionary authority by a Federal agency

at any stage of an undertaking where alterations might be made in the undertaking to modify its impact upon National Register and eligible properties.

(i) "Agency Official" means the head of the Federal agency having responsibility for the undertaking or a designee authorized to act for the Agency Official.

(j) "Council" means the Advisory Council on Historic Preservation as established by Title II of the Act.

(k) "Chairman" means the Chairman of the Advisory Council on Historic Preservation or a member designated to act for the Chairman.

(l) "Executive Director" means the Executive Director of the Advisory Council on Historic Preservation as established by Section 205 of the Act, or a designee authorized to act for the Executive Director.

(m) "State Historic Preservation Officer" means the official, who is responsible for administering the Act within the State or jurisdiction, or a designated representative authorized to act for the State Historic Preservation Officer. These officers are appointed pursuant to 36 CFR 61.2 by the Governors of the 50 States, Guam, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Trust Territory of the Pacific Islands, the Commonwealth of the Mariana Islands, and the Mayor of the District of Columbia.

(n) "Secretary" means the Secretary of the Interior or a designee authorized to carry out the historic preservation responsibilities of the Secretary under the Act, Executive Order 11593, and related authorities.

(o) "Area of the undertaking's potential environmental impact" means that geographical area within which direct and indirect effects generated by the undertaking could reasonably be expected to occur and thus cause a change in the historical, architectural, archeological, or cultural qualities possessed by a National Register or eligible property. The boundaries of such area should be determined by the Agency Official in consultation with the State Historic Preservation Officer as early as possible in the planning of the undertaking.

(p) "Consulting parties" means the Agency Official, the State Historic Preservation Officer, and the Executive Director.

§ 800.3 Criteria of effect and adverse effect.

The following criteria shall be used to determine whether an undertaking has an effect or an adverse effect in accordance with these regulations.

(a) *Criteria of Effect.* The effect of a Federal, federally assisted or federally licensed undertaking on a National Register or eligible property is evaluated in the context of the historical, architectural, archeological, or cultural significance possessed by the property. An undertaking shall be considered to have an effect whenever any condition of the undertaking causes or may cause any change, beneficial or adverse, in the quality of the historical, architectural, archeological, or cultural characteristics that qualify the property to meet the criteria of the National Register. An effect occurs when an undertaking changes the integrity of location, design, setting, materials, workmanship, feeling, or association of the property that contributes to its significance in accordance with the National Register criteria. An effect may be direct or indirect. Direct effects are caused by the undertaking and occur at the same time and place. Indirect effects include those caused by the undertaking that are later in time or farther removed in distance, but are still reasonably foreseeable. Such effects may include changes in the pattern of land use, population density or growth rate that may affect on properties of historical, architectural, archeological, or cultural significance.

(b) *Criteria of Adverse Effect.* Adverse effects on National Register or eligible properties may occur under conditions which include but are not limited to:

(1) Destruction or alteration of all or part of a property;

(2) Isolation from or alteration of the property's surrounding environment;

(3) Introduction of visual, audible, or atmospheric elements that are out of

character with the property or alter its setting.

(4) Neglect of a property resulting in its deterioration or destruction.

(5) Transfer or sale of a property without adequate conditions or restrictions regarding preservation, maintenance, or use.

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§ 800.4 Federal Agency responsibilities.

As early as possible before an agency makes a final decision concerning an undertaking and in any event prior to taking any action that would foreclose alternatives or the Council's ability to comment, the Agency Official shall take the following steps to comply with the requirements of Section 106 of the National Historic Preservation Act and Section 2(b) of Executive Order 11593. It is the primary responsibility of each Agency Official requesting Council comments to conduct the appropriate studies and to provide the information necessary for an adequate review of the effect a proposed undertaking may have on a National Register or eligible property, as well as the information necessary for adequate consideration of modifications or alterations to the proposed undertaking that could avoid, mitigate, or minimize any adverse effects. It is the responsibility of each Agency Official requesting consultation with a State Historic Preservation Officer under this section to provide the information that is necessary to make an informed and reasonable evaluation of whether a property meets National Register criteria and to determine the effect of a proposed undertaking on a National Register or eligible property. Although a Federal agency may require non-Federal parties to undertake certain steps required by these regulations as a prerequisite to Federal action and may authorize non-Federal participation under this section and in the consultation process under § 800.6 pursuant to approved counterpart regulations, the ultimate responsibility for compliance with these regulations remains with the Federal agency and cannot be delegated by it.

(a) *Identification of National Register and Eligible Properties.* It is the re-

sponsibility of each Federal agency to identify or cause to be identified any National Register or eligible property that is located within the area of the undertaking's potential environmental impact and that may be affected by the undertaking.

(1) The Agency Official shall consult the State Historic Preservation Officer, the published lists of National Register and eligible properties, public records, and other individuals or organizations with historical and cultural expertise, as appropriate, to determine what historic and cultural properties are known to be within the area of the undertaking's potential environmental impact. The State Historic Preservation Officer should provide the Agency Official with any information available on known historic and cultural properties identified in the area (whether on the National Register or not), information on any previous surveys performed and an evaluation of their quality, a recommendation as to the need for a survey of historic and cultural properties, and recommendations as to the type of survey and/or survey methods should a survey be recommended, and recommendations on boundaries of such surveys.

(2) The Agency Official shall, after due consideration of the information obtained pursuant to § 800.4(a)(1), determine what further actions are necessary to discharge the agency's affirmative responsibilities to locate and identify eligible properties that are within the area of the undertaking's potential environmental impact and that may be affected by the undertaking. Such actions may include a professional cultural resource survey of the environmental impact area, or parts of the area, if the area has not previously been adequately surveyed. The recommendations of the State Historic Preservation Officer should be followed in this matter.

(3) The Agency Official, in consultation with the State Historic Preservation Officer, shall apply the National Register criteria to all properties that may possess any historical, architectural, archeological, or cultural value located within the area of the undertaking's potential environmental impact. If either the Agency Official

or the State Historic Preservation Officer finds that a property meets the National Register Criteria or a question exists as to whether a property meets the Criteria, the Agency Official shall request a determination of eligibility from the Secretary of the Interior in accordance with 36 CFR Part 63. The opinion of the Secretary respecting the eligibility of a property shall be conclusive for the purposes of these regulations. If the Agency Official and the State Historic Preservation Officer agree that no identified property meets the Criteria, the Agency Official shall document this finding and, unless the Secretary has otherwise made a determination of eligibility under 36 CFR Part 63, may proceed with the undertaking.

(4) The Agency Official shall complete the preceding steps prior to requesting the Council's comments pursuant to § 800.4(b)-(d). The Agency Official may, however, initiate a request for the Council's comments simultaneously with a request for a determination of eligibility from the Secretary when the Agency Official and the State Historic Preservation Officer agree that a property meets the National Register Criteria. Before the Council completes action pursuant to § 800.6, the Secretary must find the property eligible for inclusion in the National Register.

(b) *Determination of Effect.* For each National Register or eligible property that is located within the area of the undertaking's potential environmental impact, the Agency Official, in consultation with the State Historic Preservation Officer, shall apply the Criteria of Effect, (§ 800.3(a)), to determine whether the undertaking will have an effect upon the historical, architectural, archeological, or cultural characteristics of the property that qualified it to meet National Register Criteria.

(1) *No Effect.* If the Agency Official, in consultation with the State Historic Preservation Officer, finds that the undertaking will not affect these characteristics, the undertaking may proceed. The Agency Official shall document each Determination of No Effect, which shall be available for public inspection. If the State Historic

Preservation Officer objects or other timely objection is made to the Executive Director to an Agency Official's Determination of No Effect, the Executive Director may review the Determination and advise the Agency Official, the State Historic Preservation Officer and any objecting party of the findings within 15 days.

(2) *Effect determined.* If the Agency Official or the Executive Director finds that the undertaking will have an effect upon these characteristics, the Agency Official, in consultation with the State Historic Preservation Officer, shall apply the Criteria of Adverse Effect, set forth in § 800.3(b), to determine whether the effect of the undertaking may be adverse.

(c) *Determinations of no adverse effect.* If the Agency Official, in consultation with the State Historic Preservation Officer, finds the effect on the historical, architectural, archeological, or cultural characteristics of the property not to be adverse, the Agency Official shall forward adequate documentation (See § 800.13(a)) of the Determination, including written evidence of the views of the State Historic Preservation Officer, to the Executive Director for review in accordance with § 800.6. If the State Historic Preservation Officer fails to respond to an Agency Official's request as provided in § 800.5, the Agency Official shall include evidence of having contacted the State Historic Preservation Officer.

(d) *Adverse effect determination.* If the Agency Official finds the effect on the historical, architectural, archeological, or cultural characteristics of the property to be adverse, or if the Executive Director does not accept an Agency Official's Determination of No Adverse Effect pursuant to review under § 800.6, the Agency Official shall:

(1) Prepare and submit a Preliminary Case Report requesting the comments of the Council (See § 800.13(b)),

(2) Notify the State Historic Preservation Officer of this request, and

(3) Proceed with the consultation process set forth in § 800.6.

(e) *Suspense of action.* Until the Council issues its comments under these regulations, good faith consulta-

tion shall preclude a Federal agency from taking or sanctioning any action or making any irreversible or irretrievable commitment that could result in an adverse effect on a National Register or eligible property or that would foreclose the consideration of modifications or alternatives to the proposed undertaking that could avoid, mitigate, or minimize such adverse effects.

EDITORIAL NOTE: At 47 FR 24306, June 4, 1982 § 800.4(a)(4) was suspended until further notice, effective July 6, 1982.

§ 800.5 State Historic Preservation Officer responsibilities.

(a) The State Historic Preservation Officer should participate in the review process established by these regulations whenever it concerns an undertaking located within the State Historic Preservation Officer's jurisdiction.

(b) Unless a longer time is agreed to by the Agency Official, the failure of a State Historic Preservation Officer to respond to an Agency Official's request for consultation under § 800.4 within 30 days after receipt shall not prohibit the Agency Official from proceeding with the review process under these regulations.

(c) The State Historic Preservation Officer, with the Agency Official and the Executive Director, should participate in any consultation under § 800.6(b) and sign any Memorandum of Agreement developed under § 800.6(c) of these regulations. Failure of a State Historic Preservation Officer to participate in a consultation under § 800.6(b) or to sign a Memorandum of Agreement as provided in § 800.6(c)(1) within 30 days of receipt without notifying the Executive Director and the Agency Official that the State Historic Preservation Officer disagrees with the terms of the Agreement shall not prohibit the Executive Director and the Agency Official from concluding the Agreement and having it ratified by the Chairman in accordance with § 800.6(c)(2).

§ 800.6 Council comments.

The following subsections specify how the Council will respond to Federal agency requests for the Council's comments required to satisfy an agen-

cy's responsibilities under Section 106 of the Act and Section 2(b) of the Executive Order.

(a) *Response to determinations of no adverse effect.* (1) Upon receipt of a Determination of No Adverse Effect from an Agency Official, the Executive Director will review the Determination and supporting documentation. Normally, the Executive Director will concur without delay. If the documentation is not adequate, the Executive Director will so inform the Agency Official within 15 days. Unless the Executive Director objects to the Determination within 30 days after receipt of an adequately documented Determination, the Agency Official will be considered to have satisfied the agency's responsibilities under Section 106 of the Act, Section 2(b) of the Executive Order, and these regulations, and may proceed with the undertaking.

(2) If the Executive Director objects to a Determination of No Adverse Effect, the Executive Director shall specify the basis for the objection and may specify conditions which will eliminate the objection. As appropriate, the Executive Director may consult the Agency Official, the State Historic Preservation Officer, and other interested parties in specifying conditions. If the Agency Official accepts the conditions in writing, the conditions will be incorporated into the agency's Determination and the Executive Director's objection will be withdrawn. The Agency Official then will be considered to have satisfied the agency's responsibilities under Section 106 of the Act, Section 2(b) of the Executive Order, and these regulations, and may proceed with the undertaking.

(3) If the Agency Official does not accept the Executive Director's conditions or if the Executive Director objects to a Determination of No Adverse Effect without specifying conditions that would remove the objection, the Executive Director shall initiate the consultation process pursuant to § 800.6(b).

(b) *Consultation Process.* The Agency Official, the State Historic Preservation Officer, and the Executive Director shall be the consulting parties to consider feasible and pru-

dent alternatives to the undertaking that could avoid, mitigate, or minimize adverse effects on a National Register or eligible property. When an undertaking involves more than one Federal agency, these agencies may, upon notification to the Executive Director, coordinate their consultation responsibilities through a single lead agency. Grantees, permittees, licensees, or other parties in interest, and representatives of national, State, or local units of government and public and private organizations, may be invited by the consulting parties to participate in the consultation process.

(1) *Preliminary Case Report.* The Agency Official shall provide copies of the report to the consulting parties at the initiation of the consultation and make it readily available for public inspection.

(2) *On-site inspection.* At the request of any of the consulting parties, the Agency Official shall conduct an on-site inspection.

(3) *Public Information Meeting.* At the request of any of the consulting parties, the Executive Director shall conduct a meeting open to the public, where representatives of national, State, or local units of government, representatives of public or private organizations, and interested citizens may receive information and express their views on the undertaking, its effects on the National Register or eligible property, and alternate courses of action that could avoid, mitigate, or minimize any adverse effects on such properties. The Agency Official shall provide adequate facilities for the meeting near the site of the undertaking and shall afford appropriate notice to the public, generally at least 15 days in advance of the meeting.

(4) *Consideration of Alternatives.* Upon review of the proposed undertaking and after any on-site inspection or public information meeting, the consulting parties shall determine whether there are feasible and prudent alternatives to avoid the adverse effects on National Register or eligible property. If the consulting parties cannot agree on an alternative to avoid, they shall consult further to determine if there are alternatives that

could satisfactorily mitigate the adverse effects.

(5) *Avoidance or Satisfactory Mitigation of Adverse Effect.* If the consulting parties agree upon a feasible and prudent alternative to avoid or satisfactorily mitigate the adverse effects of the undertaking on the National Register or eligible property, they shall execute a Memorandum of Agreement in accordance with § 800.6(c) specifying how the undertaking will proceed to avoid or mitigate the adverse effect.

(6) *Acceptance of Adverse Effect.* If the consulting parties determine that there are no feasible and prudent alternatives that could avoid or satisfactorily mitigate the adverse effects and agree that it is in the public interest to proceed with the proposed undertaking, they shall execute a Memorandum of Agreement in accordance with § 800.6(c) acknowledging this determination and specifying any recording, salvage, or other measures to minimize the adverse effects that shall be taken before the undertaking proceeds.

(7) *Failure to Agree.* Upon the failure of the consulting parties to agree upon the terms for a Memorandum of Agreement, or upon notice of such failure by any of the consulting parties to the Executive Director, the Executive Director shall notify the Chairman within fifteen days and shall recommend whether or not the matter should be scheduled for consideration at a Council meeting. The Agency Official and the State Historic Preservation Officer shall be notified in writing of the Executive Director's recommendation.

(c) *Memorandum of Agreement—(1) Preparation of Memorandum of Agreement.* It shall be the responsibility of the Executive Director to prepare each Memorandum of Agreement required under these regulations. Unless otherwise requested by the Executive Director, the Agency Official shall prepare a proposal for inclusion in the Agreement that details the actions agreed upon by the consulting parties to be taken to avoid, satisfactorily mitigate, or accept the adverse effects on the property. The State Historic Preservation Officer's written concurrence shall be included in this propos-

al by the Agency Official. If the Executive Director determines that the proposal represents the agreement of the consulting parties, he shall within 10 days forward it as a Memorandum of Agreement to the Chairman for ratification pursuant to § 800.6(c)(2). If the Executive Director determines that the proposal does not adequately represent the agreement reached by the consulting parties, it may be returned to the Agency Official, or a Memorandum of Agreement revising the proposal may be submitted to the Agency Official and the State Historic Preservation Officer. As appropriate other parties in interest may be invited by the consulting parties to indicate their concurrence with the proposal or to be a signatory to the Agreement.

(2) *Review of Memorandum of Agreement.* Upon receipt of an executed Memorandum of Agreement, the Chairman shall institute a 30-day review period. Unless the Chairman notifies the Agency Official that the matter has been placed on the agenda for consideration at a Council meeting, the Agreement shall become final when ratified by the Chairman or upon the expiration of the 30-day review period with no action taken. Copies will be provided to signatories and notice of executed Memoranda of Agreement shall be published in the FEDERAL REGISTER. The Memorandum of Agreement should be included in the final environmental impact statement prepared pursuant to the National Environmental Policy Act.

(3) *Effect of Memorandum of Agreement.* Agreements duly executed in accordance with these regulations shall constitute the comments of the Council and shall evidence satisfaction of the Federal agency's responsibilities for the proposed undertaking under Section 106 of the Act, Section 2(b) of the Executive Order, and these regulations. Failure to carry out the terms of a Memorandum of Agreement requires that the Federal agency again request the Council's comments in accordance with these regulations. In such instances, until the Council issues its comments under these regulations the Agency Official shall not take or sanction any action or make any irrevers-

ible or irretrievable commitment that could result in an adverse effect with respect to National Register or eligible properties covered by the Agreement or that would foreclose the Council's consideration of modifications or alternatives to the proposed undertaking that could avoid or mitigate the adverse effect.

(4) *Amendment of a Memorandum of Agreement.* If a signatory determines that the terms of the Memorandum of Agreement cannot be met or believes a change is necessary, the signatory shall immediately request the consulting parties to consider an amendment of the Agreement. Amendments will be executed in the same manner as the original Agreement.

(5) *Report on Memorandum of Agreement.* Within 90 days after carrying out the terms of the Agreement, the Agency Official shall report to all signatories on the actions taken.

(d) *Council Meetings.* The Council does not hold formal administrative hearings to develop its comments under these regulations. Reports and statements will be presented to the Council in open session in accordance with a prearranged agenda. Regular meetings of the Council generally occur quarterly.

(1) *Response to Recommendation for Consideration at Council Meeting.* Upon receipt of a notice and recommendation from the Executive Director concerning consideration of a proposed undertaking at a Council meeting, the Chairman shall determine within 15 days whether or not the undertaking will be considered and shall notify the Executive Director, the Agency Official, and the State Historic Preservation Officer of his decision. The Agency Official shall and the State Historic Preservation Officer should provide such reports and information as may be required to assist the Chairman in this determination.

If the Chairman decides against consideration of the undertaking at a Council meeting, a written summary of the undertaking, any recommendations for action by the Federal agency, and the decision shall be sent to each member of the Council. The Chairman shall also notify the Agency Official

and the State Historic Preservation Officer and other parties in interest of the decision. If three members of the Council object within 10 days of the Chairman's decision, the undertaking shall be scheduled for consideration at a Council meeting. Unless three members of the Council object, the chairman shall notify the Agency Official, the State Historic Preservation Officer, and other parties in interest in writing that the undertaking may proceed. Such notice shall be evidence of satisfaction of the Federal agency's responsibilities for the proposed undertaking under Section 106 of the Act, Section 2(b) of the Executive Order, and these regulations.

(2) *Decision to Consider the Undertaking.* When the Council will consider an undertaking at a meeting, the Chairman shall either designate five members as a panel to hear the matter on behalf of the full Council, or schedule the matter for consideration by the full Council.

(i) A panel shall consist of three non-Federal members, one as Chairman; and two Federal members, neither of whom shall represent the Federal agency involved in the undertaking. The panel shall meet to consider the undertaking within 30 days of the Chairman's decision unless the Agency Official agrees to a longer time.

(ii) The full Council will consider an undertaking at the next regularly scheduled meeting and no less than 60 days from the date of the Chairman's decision. In exceptional cases the Chairman may schedule the matter for consideration at a special meeting of the full Council to be held less than 60 days from the date of the decision.

(iii) Prior to any panel or full Council consideration of a matter, the Chairman will notify the Agency Official and the State Historic Preservation Officer, and other parties in interest of the date on which the undertaking will be considered. The Executive Director, the Agency Official, and the State Historic Preservation Officer shall prepare reports in accordance with § 800.13. Reports required from the Agency Official and the State Historic Preservation Officer must be received by the Executive Director at least 21 days before any meeting. Fail-

ure by the Federal agency to submit its report may result in postponement of consideration of the undertaking.

(3) *Meeting Notice.* Generally, 21 days notice of all meetings involving Council review of undertakings in accordance with these regulations shall be given by publication in the **FEDERAL REGISTER**. In exceptional cases, no less than 7 days notice shall be given by publication in the **FEDERAL REGISTER**.

(4) *Statements to the Council.* An agenda shall provide for oral statements from the Executive Director; the Agency Official; other parties in interest; the Secretary of the Interior; the State Historic Preservation Officer; representatives of national, State, or local units of government, and interested public and private organizations and individuals. Parties wishing to make oral remarks should notify the Executive Director at least two days in advance of the meeting. Parties wishing to have their statements distributed to Council members prior to the meeting should send copies of the statements to the Executive Director at least 7 days in advance.

(5) *Comments of the Council.* The written comments of the Council will be issued within 15 days after a meeting. Comments shall be made to the head of the Federal agency requesting comment or having responsibility for the undertaking. Immediately after the comments are made to the Federal agency, the comments of the Council will be forwarded to the President and Congress as a special report under authority of Section 202(b) of the Act and a notice of availability will be published in the **FEDERAL REGISTER**. The comments of the Council shall be available to the State Historic Preservation Officer, other parties in interest, and the public upon receipt of the comments by the head of the Federal Agency. The comments of the Council should be included in the final environmental impact statement prepared pursuant to the National Environmental Policy Act.

(6) *Review of Panel Decision.* Upon receipt of the panel's comments after a meeting, the head of the Federal agency shall take these comments into account in reaching a decision in regard to the proposed undertaking. If

the agency determines not to follow the panel's comments, the Agency Official shall immediately provide written notice of this decision to the Council. The Chairman may convene a meeting of the full Council to consider the matter within 30 days of receipt of such notice. In the interim period the Agency Official shall not take or sanction any action or make any irreversible or irretrievable commitment that could result in an adverse effect on the National Register or eligible property or that would foreclose the Council's consideration of modifications or alternatives to the proposed undertaking that could avoid or mitigate the adverse effect. If the Chairman decides against consideration of the proposed undertaking, the consulting parties shall be immediately notified and the undertaking may proceed.

(7) *Agency Action in Response to Council Comments.* Upon receipt of the Council's comments after a meeting, the head of the Federal agency shall take these comments into account in reaching a final decision in regard to the proposed undertaking. When a final decision regarding the proposed undertaking is reached by the Federal agency, the Agency Official shall submit a written report to the Council describing the actions taken by the Federal Agency in response to the Council's comments; the actions taken by other parties pursuant to the actions of the Federal Agency; and the effect that such actions will have on the affected National Register or eligible property. Receipt of this Report by the Chairman shall be evidence that the agency has satisfied its responsibilities for the proposed undertaking under Section 106 of the Act, Section 2(b) of the Executive Order and these regulations. The Council may issue a final report to the President and Congress under authority of Section 202(b) of the Act describing the actions taken by the agency in response to the Council's comments including recommendations for changes in Federal policy and programs, as appropriate.

(8) *Continuing Review Jurisdiction.* When the Council has met and commented upon an undertaking that will require subsequent site-specific under-

takings by a Federal agency, the Council's comment extends only to the undertaking as reviewed. The Agency Official shall ensure that subsequent actions related to the undertaking that have not been considered by the Council will be submitted to the Council for review in accordance with these regulations.

EDITORIAL NOTE: At 47 FR 24306, June 4, 1982 § 800.6(c)(1) and (d)(2)(ii) were suspended until further notice, effective July 6, 1982.

§ 800.7 Resources discovered during construction.

(a) *Federal Agency Responsibilities.* If a Federal agency has previously met its responsibilities for identified National Register and eligible properties under Section 106 of the Act, Section 2(b) of the Executive Order, these regulations, and the National Environmental Policy Act (42 U.S.C. 4321 et seq.), and an Agency Official finds or is notified after construction has started that an undertaking will have an effect on a previously unidentified National Register or eligible property, the Federal agency may fulfill its responsibilities under Section 106 of the Act, Section 2(b) of the Executive Order, and these regulations, by complying with the requirements of the Archeological and Historic Preservation Act (16 U.S.C. 469(a)) as implemented by the Secretary, unless the Secretary determines that the significance of the property, the effect, and any proposed mitigation actions warrant Council consideration. If the Secretary determines the Council's comments are warranted, the Agency Official shall request the comments of the Council.

(b) *Council Comments.* Within 30 days of receipt of a request for comments from an Agency Official under this section, the Executive Director, with the concurrence of the Chairman, shall transmit comments on behalf of the Council to the Agency Official or the Chairman shall convene a meeting of the Council pursuant to § 800.6.

FEDERAL PROGRAM COORDINATION

§ 800.8 Programmatic Memorandum of Agreement.

(a) *Application.* At the request of an Agency Official, the Council will consider execution of a Programmatic Memorandum of Agreement to fulfill an agency's responsibilities under Section 106 of the Act and Section 2(b) of the Executive Order for a particular program or class of undertakings that would otherwise require numerous individual requests for comments under these regulations. Within 30 days after the request, the Executive Director will notify the agency official whether a Programmatic Memoranda of Agreement may be used. Generally, Programmatic Memorandum of Agreement may be used in the following types of situations:

(1) Non-site-specific undertakings, including Federal approval of State plans pursuant to Federal legislation, development of comprehensive or area-wide plans, agency recommendations for legislation, and the establishment or modification of regulations and planning guidelines.

(2) Undertakings that are repetitive in nature and have essentially the same effect on National Register or eligible properties.

(3) Programs that are designed to further the preservation and enhancement of National Register or eligible properties.

(4) Programs with statutory time limits for project application and approval that would not permit compliance with these regulations in the normal manner.

(b) *Consultation Process.* Upon determination by the Executive Director that a Programmatic Memorandum of Agreement is appropriate, the Agency Official and the Executive Director shall consult to develop a Programmatic Memorandum of Agreement. When the Agreement will affect a particular State or States, the appropriate State Historic Preservation Officer may be a party to the consultation. When the Agreement involves issues national in scope, the President of the National Conference of State Historic Preservation Officers or a designated representative may be a party to the

consultation. The Executive Director may invite other parties, including other Federal agencies with responsibilities which may be affected by the Agreement, to participate in the consultation and may hold a Public Information Meeting (see § 800.6(b)(3)) on the proposed Agreement.

(c) *Preparation of the Agreement.* It shall be the responsibility of the Executive Director to prepare each Agreement. At least 30 days before executing an Agreement, the Council shall publish notice of the proposed Agreement in the FEDERAL REGISTER inviting comments from Federal, State, and local agencies and the public. The Council will make copies available to interested parties and to appropriate A-95 clearinghouses.

(d) *Execution of the Agreement.* After consideration of comments received and completion of any necessary revisions, the Executive Director, the Agency Official, and other parties, if appropriate, shall sign the Agreement and it shall be sent to the Chairman for ratification.

(e) *Chairman's Review.* Upon receipt of a signed Agreement, the Chairman shall review the Agreement and within 30 days shall take one of the following actions:

(1) Ratify the Agreement, at which time it will take effect.

(2) Submit the Agreement to the full Council for approval.

(3) Disapprove the Agreement.

(f) *Effect of the Agreement.* An approved Programmatic Memorandum of Agreement shall constitute the comments of the Council on all individual undertakings carried out pursuant to the terms of the Agreement and, unless otherwise provided by the Agreement, shall satisfy the agency's responsibilities under Section 106 of the Act, Section 2(b) of the Executive Order, and these regulations for all undertakings carried out in accordance with the Agreement.

(g) *Notice.* Notice of an approved Programmatic Agreement shall be published by the Council in the FEDERAL REGISTER. Copies shall be distributed through appropriate A-95 clearinghouses and the consulting parties shall make copies readily available to the public. The Programmatic Memo-

randum of Agreement should be included in the final environmental impact statement prepared pursuant to the National Environmental Policy Act.

(h) *Term.* Unless otherwise provided by the Agreement, duly executed Programmatic Memorandum of Agreement shall remain in effect until revoked by any one of the signatories. The Agency Official shall submit a report annually to the Executive Director and other signatories on all actions taken pursuant to the Agreement, including any recommendations for modification or termination of the Agreement. The Executive Director and other signatories shall review the report and determine whether modification or termination of the Agreement is appropriate.

§ 800.9 Coordination with agency requirements under the National Environmental Policy Act (42 U.S.C. 4321 et seq.).

Section 101(b)(4) of the National Environmental Policy Act (NEPA) declares that one objective of national environmental policy is to "preserve important historic, cultural, and natural aspects of our national heritage and maintain, wherever possible, an environment which supports diversity and variety of individual choice." In order to meet this objective, Federal agencies should coordinate NEPA compliance with the separate responsibilities of the National Historic Preservation Act and Executive Order 11593 to ensure that historic and cultural properties are given proper consideration in the preparation of environmental assessments and environmental impact statements. Agency obligations pursuant to the National Historic Preservation Act and Executive Order 11593 are independent from NEPA requirements and must be complied with even when an environmental impact statement is not required. Agencies should also be aware that the threshold for compliance with Section 106 and the Executive Order is less than that for preparation of an environmental impact statement. The former applies to any Federal, federally assisted or federally licensed undertaking having an effect on a National Register or eligible property, while the

latter extends only to major Federal actions significantly affecting the human environment. Where both NEPA and the Act or Executive Order are applicable, the Council on Environmental Quality, in its National Environmental Policy Act—Regulations (40 CFR 1502.25), directs that draft environmental impact statements prepared under Section 102(2)(C) of NEPA shall, to the fullest extent possible, be prepared with and integrated with other environmental impact analyses and related surveys and studies required by other authorities—such as the National Historic Preservation Act and Executive Order 11593. Preparation of a draft environmental impact statement may fulfill the requirements for reports and documentation under these authorities.

Circulation of the statement for comment pursuant to Section 102(2)(C) of NEPA shall constitute a request for Council comments under § 800.4 of these regulations if Federal agencies so request in cover letters circulated with draft environmental impact statements. To coordinate the independent responsibilities of the Act and NEPA, Federal agencies should undertake compliance with these regulations whenever National Register or eligible properties may be affected by an undertaking. The following subsections indicate the appropriate means of coordinating the substance and timing of agency compliance with NEPA, Section 106, and Section 2(b). The Council will review agency environmental impact statements in accordance with this section. Adherence to these provisions will provide Federal agencies with an adequate record of the consideration of National Register and eligible properties during the planning process and will facilitate the production of a single document to meet the requirements of NEPA, Section 106, Executive Order 11593, and these regulations.

(a) It is normally intended that the Section 106/Executive Order commenting period run concurrently with the NEPA review process. Initiation of the consideration of historic and cultural resources should coincide with the initiation of other environmental

reviews. To the maximum extent possible, agencies should reflect the status of compliance with Section 106, the Executive Order, and these regulations in all documents prepared under NEPA (environmental assessments, draft environmental impact statements, and final environmental impact statements) to provide the public with the fullest and most complete information available on effects on historic and cultural resources and alternatives to reduce those effects. If the commenting process under Section 106 and the Executive Order is not completed before the final environmental impact statement is issued, as with undertakings where subsequent design stage reviews occur, agencies should include the Council's comments in any supplemental statement that is prepared pursuant to NEPA.

(b) Federal agencies should initiate compliance with Section 106 of the Act and the Executive Order in accordance with these regulations during initial environmental assessments that are undertaken to meet the requirements of NEPA and agency environmental procedures. In any event, this should occur no later than during the preparation of the draft environmental impact statement. Identification of National Register and eligible properties should be carried out in accordance with § 800.4 of these regulations. Potential effects should then be evaluated in accordance with the Criteria of Effect and Adverse Effect in § 800.3 of these regulations. The environmental assessment and the draft environmental impact statement should fully describe any National Register or eligible properties within the area of the undertaking's potential environmental impact and the nature of the undertaking's effect on them.

(c) If evaluation of the effect resulted in a Determination of No Effect or No Adverse Effect under § 800.4, that finding, along with supporting documentation, should be included or referenced in the environmental assessment and the draft environmental impact statement.

(d) If evaluation of the effect resulted in a Determination of Adverse Effect, that finding and a copy of the agency's request for the Council's

comments in accordance with § 800.4(d)(1) of these regulations should be included in or referenced in the environmental assessment and the draft environmental impact statement. Agencies should include all available relevant information on National Register and eligible properties, the effects of the undertaking and alternative courses of action so that the draft environmental impact statement can be submitted as the preliminary case report under § 800.12(b) of these regulations. In some instances, the Section 106/Executive Order commenting process will be completed prior to issuance of a draft environmental impact statement. In that event, the comments of the Council should be included in the draft.

(e) Completion of the Council commenting process in accordance with these regulations should precede issuance of the final environmental impact statement. Comments of the Council obtained pursuant to § 800.6 or § 800.8 of these regulations should be incorporated into the final statement.

(f) The Council, in its review of environmental impact statements for undertakings that affect National Register or eligible properties, will look for evidence of proper compliance with Section 106 of the Act, Section 2(b) of the Executive Order, and these regulations. The Council's views on the agency's compliance with those authorities will be included in its comments on environmental impact statements.

§ 800.10 Coordination with the Presidential Memorandum on Environmental Quality and Water Resources Management.

Federal Agencies with water resources responsibilities shall, not later than three months after publication of these regulations as finally adopted in the **FEDERAL REGISTER**, publish procedures to implement these regulations as required by the Presidential Memorandum on Environmental Quality and Water Resources Management. Each agency shall consult with the Council while developing its procedures and shall provide an opportunity for public review and comment on

their proposed regulations. Agency procedures shall be effective when the Chairman approves them as conforming to the Presidential Memorandum and these regulations. Agency procedures must at a minimum include acceptable measures to prevent or mitigate losses of historic or cultural resources and provisions to insure that all projects not yet constructed will comply with these regulations. Additionally, such procedures shall prescribe a clear way to identify funding for environmental mitigation in an agency's appropriation requests. The procedures shall be approved by the Chairman within 60 days if they are consistent with these regulations. Once in effect they shall be filed with the Council and made readily available to the public. Agencies are also encouraged to publish explanatory guidance for the procedures.

§ 800.11 Counterpart regulations.

Individual Federal agencies may, in accordance with Section 1(3) of the Executive Order, the President's Memorandum on Environmental Quality and Water Resources Management, and these regulations, choose to adopt counterpart regulations related to their specific programs and authorities to assist in meeting their responsibilities under Section 106 of the Act and Section 2(b) of the Executive Order.

(a) Responsibilities of individual Federal agencies pursuant to § 800.4 may be met by counterpart regulations jointly drafted by that agency and the Executive Director and approved by the Chairman. The Federal agency shall provide ample opportunity for public participation in the development of such counterpart regulations, including publication in the FEDERAL REGISTER as proposed and final rule making with provision for a minimum 60 day period for public comment. Once in effect such counterpart regulations may, as appropriate, supercede the requirements of § 800.4. The Federal agency shall file approved counterpart regulations with the Council and shall make them readily available to the public.

(b) Counterpart regulations may include:

(1) A definition of undertaking as it applies to that agency's particular activities and programs,

(2) Methods to identify National Register and eligible properties for each class of undertakings,

(3) Methods to evaluate effects on National Register or eligible properties,

(4) Authorization for non-Federal participation in the consultation process, and

(5) Standards, guidelines and other measures to ensure avoidance or mitigation of adverse effects on National Register and eligible properties for each class of undertakings.

(c) To the maximum extent possible, counterpart regulations developed pursuant to this section should be integrated with agency regulations for the National Environmental Policy Act.

OTHER PROVISIONS

§ 800.12 Investigation of threats to National Register and eligible properties.

(a) The Council is frequently advised by State Historic Preservation Officers and others of undertakings that threaten National Register or eligible properties and that appear to involve a Federal agency. In order to protect these properties, the Executive Director investigates these matters, generally by writing to the Federal agency that appears to be involved in the undertaking. Federal agencies should respond to these inquiries within 30 days. If there is Federal involvement in the undertaking, the agency shall fulfill its responsibilities under these regulations.

(b) The Council will exercise its authority to comment to Federal agencies under these regulations in certain special situations even though written notice that an undertaking will have an adverse effect has not been received.

§ 800.13 Reports to the Council.

In order to meet responsibilities under these regulations, the Council prescribes that certain reports and documents be made available to it. The content of such reports is set forth below. The purpose is to provide

sufficient information for the Council to evaluate the significance of affected National Register and eligible properties, understand the objectives and requirements of the undertaking, assess the effect in terms of the criteria specified in these regulations, and analyze the feasibility and prudence of alternatives. The Council further recognizes that the Act requires that National Register and eligible properties should be preserved "as a living part of our community life and development," and considers those elements in an undertaking that have relevance beyond historical and cultural concerns. To assist it in weighing the public interest, the Council seeks information not only bearing upon physical, esthetic, or environmental effects but also information concerning economic, social, and other benefits or detriments that will result from the undertaking. Agencies should consider these reports in the context of their compliance with the National Environmental Policy Act and incorporate their content in environmental assessments, draft environmental impact statements and final environmental impact statements as specified in § 800.9.

(a) *Documentation for Determination of No Adverse Effect.* Adequate documentation of a Determination of No Adverse Effect pursuant to § 800.4 should include the following information:

(1) A description of the agency's involvement with the proposed undertaking with citations of the agency's program authority and applicable implementing regulations, procedures, and guidelines;

(2) A description of the proposed undertaking including, as appropriate, photographs, maps, drawings, and specifications;

(3) A list of National Register and eligible properties that will be affected by the undertaking, including a description of the property's physical appearance and significance;

(4) A brief statement explaining why each of the Criteria of Adverse Effect (See § 800.3) was found inapplicable;

(5) Written views of the State Historic Preservation Officer concerning

the Determination of No Adverse Effect, if available; and,

(6) An estimate of the cost of the undertaking, identifying Federal and non-Federal shares.

(b) *Preliminary Case Reports.* Preliminary Case Reports should be submitted with a request for comments pursuant to § 800.4 and should include the following information:

(1) A description of the agency's involvement with the proposed undertaking with citations of the agency's program authority and applicable implementing regulations, procedures, and guidelines;

(2) The status of this project in the agency's approval process;

(3) The status of this project in the agency's National Environmental Policy Act compliance process and the target date for completion of all environmental responsibilities;

(4) A description of the proposed undertaking including, as appropriate, photographs, maps, drawings, and specifications;

(5) A description of the National Register or eligible properties affected by the undertaking, including a description of the properties' physical appearance and significance;

(6) A brief statement explaining why any of the Criteria of Adverse Effect (See § 800.3) apply;

(7) Written views of the State Historic Preservation Officer concerning the effect on the property, if available;

(8) The views of other Federal agencies, State and local governments, and the other groups or individuals, when known;

(9) A description and analysis of alternatives that would avoid the adverse effects;

(10) A description and analysis of alternatives that would mitigate the adverse effects; and,

(11) An estimate of the cost of the undertaking, identifying Federal and non-Federal shares;

(c) *Reports for Council Meeting.* Consideration of an undertaking by either the full Council or a panel pursuant to § 800.6 is based on reports from the Executive Director, the Agency Official, the Secretary of the Interior, the State Historic Preserva-

tion Officer, and others. The reports consist of the following:

(1) *Secretary of the Interior's Report.* The report from the Secretary shall include a verification of the legal and historical status of the property and an assessment of the historical, architectural, archeological, or cultural significance of the property.

(2) *Agency Official's Report.* The report from the Agency Official requesting comments shall include a general discussion and chronology of the proposed undertaking; an account of the steps taken to comply with the National Environmental Policy Act (NEPA); any relevant supporting documentation in studies that the agency has completed; an evaluation of the effect of the undertaking upon the property, with particular reference to the impact on the historical, architectural, archeological, and cultural values; steps taken or proposed by the agency to avoid or mitigate adverse effects of the undertaking; a thorough discussion of alternate courses of action; and an analysis comparing the advantages resulting from the undertaking with the disadvantages resulting from the adverse effects on National Register or eligible properties. The Agency Official shall arrange for the submission and presentation of any report by a grantee, permittee, licensee, or other party receiving Federal assistance or approval to carry out the undertaking.

(3) *Other Federal Agency Reports.* A report from any other Federal agency involved in the undertaking or a related action that affects the property in question, including a general description and chronology of that agency's involvement and its relation to the undertaking being considered by the Council.

(4) *State Historic Preservation Officer's Report.* A report from the State Historic Preservation Officer should include an assessment of the significance of the property within the State preservation program; an evaluation of the effect of the undertaking upon the property and its specific components; an evaluation of known alternate courses of action; a discussion of present or proposed participation of State and local agencies or organizations in

preserving or assisting in preserving the property; an indication of the support or opposition of units of government and public and private agencies and organizations within the State; and the recommendation of the State Historic Preservation Officer.

(5) *Executive Director's Report.* A report from the Executive Director shall include a description of the actions taken pursuant to these regulations, an evaluation of the effect of the undertaking on the property, a review of any known alternate courses of action, an analysis comparing the advantages resulting from the undertaking with the disadvantages resulting from the adverse effects on National Register or eligible properties and recommendations for Council action.

(6) *Other Reports.* The Council will consider other pertinent reports, statements, correspondence, transcripts, minutes, and documents received from any and all parties, public or private. Reports submitted pursuant to this section should be received by the Council at least 7 days prior to a Council meeting.

§ 800.14 Supplementary guidance.

The Executive Director may issue further guidance to interpret these regulations to assist Federal agencies and State Historic Preservation Officers in meeting their responsibilities. The guidelines are for informational purposes only and will be published in the FEDERAL REGISTER and will be readily available to the public.

§ 800.15 Public participation.

The Council encourages maximum public participation in the review process under these regulations. The Council, Federal agencies, and State Historic Preservation Officers should seek assistance from the public including other Federal agencies, units of local and State government, public and private organizations, individuals and federally recognized Indian tribes in evaluating National Register and eligible properties, determining effect, and developing alternatives to avoid or mitigate an adverse effect. The public has considerable information available

that could assist Federal agencies, the State Historic Preservation Officer and the Council in meeting their responsibilities under these regulations. The Council especially urges that Federal agencies make every effort to involve grantees, permittees, licensees, and other parties in interest in the consultation process. To this end, the Council, the Agency Official, and the State Historic Preservation Officer should:

(a) Make readily available, to the extent possible, documents, materials, and other information and data concerning the undertaking and effects on National Register and eligible properties that may be of interest to the public. Such information should be made available within the limits of the Freedom of Information Act (5 U.S.C. 552) and need not necessarily include information on budget, financial, personnel, and other proprietary matters or the specific location of archeological sites. Material to be made available to the public by the agency and the State Historic Preservation Officer should be provided to the public at the minimum cost permissible.

(b) Make the public aware of Public Information Meetings (§ 800.6(b)(3)), full or panel Council meetings (§ 800.6(d)), and the availability of other information related to the review process under these regulations such as a Determination of No Effect, a Determination of No Adverse Effect, a Memorandum of Agreement (See § 800.6(c)) or a Programmatic Memorandum of Agreement (See § 800.8). The purpose of such notice is to inform persons, agencies, and organizations that may be interested or affected by the proposed undertaking of the opportunity to participate in the review process under these regulations. This may include:

(1) Mailing notice to those who have requested it on an individual undertaking or Programmatic Memorandum of Agreement.

(2) Use of notice in local newspaper, local media, and newsletters that may be expected to reach potentially interested persons.

(3) Posting of notice on- and off-site in the area where the undertaking is proposed to be located.

(c) Solicit relevant information from the public during the identification of National Register and eligible properties, the evaluation of effects, and the consideration of alternatives.

(d) Hold or sponsor public meetings on proposed undertakings and make diligent efforts to include the public.

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